S. Kanara 3/54

1954

File No.

Legal DEPARTMENT
E BRANCH

Subject:— Suits. — Kanara.

C. S. No. 156 of 1953.

S. G. Naik - - - - - - Plff —

V/s

The State of Bombay - — Deft

Re:- For an injunction restraining the defendant from recovering by way of arrears of land revenue, or otherwise by recourse to the Court of law, any amount whatsoever on account of the alleged loss of or damage caused to the defendant by or on account of plaintiff's negligence.

P-104/E

S. Kanara 3/54.

File No.

3/54

Std. Scott. Slip 24-B

REVENUE DEPARTMENT
File No. D
-30(.953(31)
Serial No. (
11943

To 8p by R.P.A.D.

Letter

To

The Secretary to Government,
Revenue Department, Bombay.

No.8845 Karwar, 29-9-1953.

Subject: Recovery
Naik Shri S.G....from;
Civil Suit in the matter of

Information on the above subject as required by Rule 118 of the "Rules for the conduct of the legal affairs of Government" is given hereunder:

i) No.of the Suit	:	Original Civil Suit No.156/53.
ii) Date on which and the Court in which it is instituted	:	It is instituted in the Court of the Civil Judge, Senior Division, Karwar and it appears to have been presented on 30-7-1953.
iii) Names of all parties	:	Shri Sadashiv Govind Naik, Shanbhog, now residing at Haliyal ...Plaintiff Vs. The State of Bombay ...Defendant
iv) Amount or value of claim	:	The claim has been valued at Rs.5/- for the purpose of court fees. It is a suit for injunction against the defendant not to recover from the plaintiff an amount of Rs.1837-8-0 claimed by Government from him. There is an alternative prayer for declaration that the defendant is not entitled to recover from the plaintiff any amount exceeding Rs. 390-11-6.
v) Date fixed by Court for first hearing	:	The suit was fixed for first hearing on 22-9-53. But the Dist. Govt.Pleader, Kanara, has been directed to move for extension time under Order rule 7 of the C.P.C.

REVENUE DEPARTMENT
File No. D
-30 OCT 1953 (31)
Serial No. 11942

To go by R.P.A.D.

Letter

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vi) Whether notice of action has been given under Section 80 of the C.P.C. and if so, date of delivery of such notice : Yes, on 30-4-1953 (page 63-67 File VI).

2. A copy of the plaint in English is enclosed, (pages 99 to 108 of File VI). No other document annexed to the plaint is received in this office.

3. Facts of the case:

a) On 29-12-1948, a cultivator Shri Krishna Fakirappa of Janaga village in Haliyal Taluka obtained a chalan from the shanbhog of Janaga to carry 8 bags of paddy to Murkawad paddy purchasing centre in order to satisfy his levy demand and accordingly 8 bags and 60 lbs. of paddy were sold by him to Government at the Murkwad purchase centre on 29-12-1948 and the chalan was receipted by the Godown Keeper.

b) When the chalan was presented to the C.I.Murkwad(Plaintiff) for payment of cost of paddy sold by the said cultivator on 24-1-1949, the plaintiff paid him Rs.2029-7-3 as price of 88 bags and 60 lbs. This resulted in an excess payment of Rs.1837-8-0 to the vendor. This over-payment was detected on 24-2-1949 during the verification of vouchers by the Account Supervisor. The plaintiff was thereupon suspended and a Departmental Enquiry was held against him.

c) In the meanwhile, the vendor, Shri Krishna Fakirappa, was arrested and was prosecuted for forgery and cheating under sections 471 and 42 I.P.C. The criminal case was committed to the Sessions and the accused has been acquitted by the Sessions Judge. As the Sessions Judge remarked in his judgement (p. 77 File I) that the plaintiff did not do his duty properly and as the question of recovering the amount of Rs. 1837-8-0 paid in excess still remained, charges of gross negligence in the discharge of his

113

duties were framed against the plaintiff

d) In the enquiry, it transpired th the plaintiff did not exercise necessary care and vigilance as was expected of him in this particular case and that this omission on his part resulted in a loss of Rs.1837-8-0 to Government. It was, therefore, ordered that the plaintiff should make good the amount of Rs.1837-8-0 (p. 13 -17, file IV).

The plaintiff went in appeal to Government against the Collector's order. After careful consideration of the case, Government informed that they saw no reason to interfere with the order passed by the Collector. Government also directed that the whole amount of Rs. 1837-8-0 should be recovered from the plaintiff (page 39 File VI). The plaintiff also approached the Minister, R.D.; but his request was refused (page 83, File VI).

The recovery proceedings are now stayed in view of the Civil Court injunction order dated 4-9-1953 (page 109 of File VI).

4. Grounds for defence:

Plaint para 2:

It is not quite correct to say that the circle was one of the biggest paddy purchasing centres. The target fixed and the net purchase for 1948-49 season at Murkwad purchasing centre (scene of action) were 20,000 B.Mds. and 20,766 B.Mds. respectively which stand no comparison to the corresponding figures at Haliyal centre viz. 120,000 B.Mds. and 1,32,520 B.Mds. respectively(page 113 of File VI).

Plaint para 3:

During the period in question there

P.T.O.

was no system of making payments through cashier Talatis. Throughout the district, there was the uniform practice of making payments to the paddy vendors by the C.Is. in their respective circles. Some of these vendors used to come with their chalans directly to the Sub-treasury at Kaniyal and receive payments. In order to facilitate early payments to vendors the C.I. was required to go to the different villages and make payments. But on all such occasions, he used to receive assistance of the V.Os. For example, in the present case, Shri Shamba Nagesh Shetti, shanbhog of Nandigadde was assisting the plaintiff on 24-1-1949. Hence, it is not true that the plaintiff had to do the work of 3 full time cashier talatis independantly of any other work. The very fact that the plaintiff did this work without any complaint clearly showed that he could cope with the work. The cashier Talati system was introduced next year throughout the district.

Plaint para 4:

The system followed was as under:-

There were printed grain chalans which were issued by V.Os. to each cultivator. These chalans were serially numbered. The first part thereof mentioned the quantity of paddy which the cultivator concerned was required to sell to Government. Empty gunny bags for the required quantity of levy were used to be issued by the V.Os. and their number used to be noted at the top of the chalan.

The second part consisted of an endorsement from the Godown Keeper as to the actual quantity received by him in his godown. There used to be stock registers maintained by Godown Keepers which clearly showed what ~~quantity~~ quantity of paddy of each quality was received by him every day from such cultivators and also

57

under which chalan No.

If the plaintiff had any doubts, he should not have made payment at all. He could have verified the figures from the godown registers and satisfied himself before making actual payments. Therefore, it is incorrect to say that there was absolutely no means of verifying or checking the correctness of the grain chalans or that the plaintiff had to depend entirely on grain chalans for making payments. The plaintiff had sufficient data to rouse his suspicion and to withhold payment in this case till he was convinced of the correctness of the entries.

Para 12 of the Sessions Court Judgement clearly throws suspicion about the conduct of the plaintiff and charges him with not doing his duty properly (page 77 File I). Please also vide D.S.O's report at pages 3 to 19 of File I.

Plaint para 5:

Ordinarily, payments are not made at the head quarters; but by going to the different centres so as to facilitate the payments to the vendors on the spot and also to obtain co-operation and Help from the V.Os. of the respective centres.

Plaint para 6:

It is not correct to say that the plaintiff was required to make definite number of payments per day. It depended on his ability and convenience. Similarly, the total sum disbursed each day depended on several circumstances. There used to be few paddy vendors selling large number of bags of paddy or vice versa. Therefore, the contents of para 6 are exaggerated.

P.T.O.

This contention would have gained some importance, had the handing over of the chalan and the receipt of the amount by the vendor been simultaneous. But that was not the case. The chalan was handed over on the 24th evening and was in the possession of the plaintiff from that time till about 10 a.m.next morning when payment was made.

Plaint para 7:

On 29-12-1948, the vendor had gone to the shanbhog of the firka and had told him that he wanted to sell Government only 8 bags of paddy. The shanbhog had given to him only 8 empty gunny bags and had mentioned this at the top of the ~~ch~~ chalan. This chalan is at page 123 of File I. In the first column of this chalan, he had endorsed that 8 bags of paddy were to be sold to Government by Shri Krishna. This figure of 8 was quite clear and clean. The counterfoil of this chalan remained with the shanbhog (It was exhibit 3 in the sessions case --p. 27, file II). An appropriate entry had been made in the register of empty gunny bags showing that Krishna had received only 8 gunny bags(vide Ex.No.2 of that case - p.23 File II). On 31-12-49, Krishna delivered 8 bags of paddy to Khadarkhan, Godown Keeper. He made an entry in the godown register which shows that the paddy delivered to him weighed only 8 bags and 60 lbs. (vide Ex.No.16 - page 33 File III). This Godown Keeper filled in and signed the second part of the chalan showing both in letters and figures that he had received 8 bags and 60 lbs. of paddy.

On 24-1-1949, the said Krishna took the chalan to the plaintiff to receive payment. It appears that 50 such vendors had gone to the plaintiff on the same day along with Krishna at about 5 p.m. He started verifying the chalans

with the help of the Nandigadde shanbhog, Shamba, who was examined at Ex.9 in the Session case. The verification work was not over till 8 p.m. and therefore, the plaintiff asserted in his statement in the Sessions case that he had asked all the 50 vendors to come next morning. This will show that the chalan in question in which the figures and letters were found to have been tampered with was with the plaintiff for more than 12 hours. If the time was insufficient, he could have asked the vendor to come next day afternoon. All this happened at Haliyal proper. The plaintiff could have asked for additional help from the taluka office if he desired. Yet the plaintiff asserts that the tampering of the chalan had not come to his notice and that he paid to Krishna Rs.2029-7-3. He has endorsed the payment of this sum in the third part of the chalan. Voucher for such payment is at Ex.6, which is at page 97 File III and the relevant entry is at S.No.46 therein.

The plaintiff is now charged with gross negligence and not with misappropriation of amount. The mistake was detected during audit by the Account Supervisor on 24-2-1949

It is important to note that in the second part of this chalan where the Godown Keeper had written the figure 8, it is now seen as 88. Similarly,behind the word eight (ಎಂಟು) we now see the word eighty (ಎಂಬತ್ತು).It is improbable that the plaintiff could have failed to noticed these words eighty-eight(ಎಂಬತ್ತು-ಎಂಟು)separately written. The word should have been

P.T.O.

eighty-eight(ఎంబై ఎనిమిది). Prefixing the word eighty in this column behind the word eight ought to have raised suspicion in the mind of any person unless he was negligent or privy to the culprit. In para 7 of his statement in the Sessions Court, the plaintiff said that he never questioned Krishna as to the number of bags sold by him. But, he has contradicted this by his own previous statement made in the Committing Magistrate's Court. The learned Sessions Judge has come to the conclusion that the chalan had not been tampered with when it was produced before the plaintiff on 24-1-1949. It means that either the plaintiff or any one privy to him had tampered with it with the connivance of the plaintiff. But he is not charged with such misappropriation or any other criminal acts. He is only held responsible for negligence. Therefore, even if the chalan had been tampered with before it was presented by Krishna to the plaintiff, he cannot escape from his liability of negligence. Contents of para 7 of the plaint are thus rebutted.

If the plaintiff had checked the grain chalan carefully, he would have at least suspected the genuineness and then it was his duty to withhold payment until he was convinced that the quantity of paddy sold was 88 bags. The intrinsic evidence of the vivid tampering of the chalan and the suspicious conduct of the plaintiff are sufficient to establish the plaintiff's negligence if not anything more. It is not true that the plaintiff acted with due care and attention or with due deligence.

Plaint para 8:

There is no direct evidence to prove the receipt of Rs.2029-7-3 by the accused (please

979

vide concluding sentence of para 12 of the Sessions Court Judgement). The fact, however, remains that Government has been out of pocket to the tune of Rs.2029-7-3 as against the legitimate dues of Rs.189 and odd.

Plaint paras 9 and 10:

No remarks.

Plaint para 11:

According to para 12 of the Session's Court Judgement, there is no direct evidence to prove receipt of Rs.2029-7-3 by the vendor (Krishna). In the circumstances, the amounts referred to in paras 9 and 11 of the plaint can never be treated as amounts recovered out of the misappropriated amount. They are amounts liable to be returned to Krishna in case he establishes his right over them. The plaintiff cannot claim the benefits of these sums lying with Government and seek deduction thereof. It is irrelevant whether the vendor (Krishna) got the amount back or not. If Krishna failed to obtain necessary orders from the Sessions Court, the plaintiff (who is a third party) cannot claim benefit out of it.

Plaint paras 12 and 13

No remarks.

Plaint para 14:

The grounds alleged in this para are not tenable. The Sessions Court Judgement sufficiently answers all these points. There was absolutely no reason for the plaintiff to commit any error of judgement as the changed figures and letters were sufficient to create suspicion. The plaintiff visited Janaga village on 4-1-1949 and remarked

P.T.O.

in the visitor's book that he tried for procurement of paddy. He must have, therefore, looked into the levy list of the village and must have noticed that the highest levy demand from an individual of the village was only about 70 bags.

Plaint para 15:

No remarks as it contains repetition of the allegations already discussed.

Plaint para 16:

The plaintiff is not entitled to claim any deductions of the two amounts mentioned in this para. These amounts were attached during the police investigation. They were credited to a separate head. Krishna (vendor) is entitled to claim back these amounts according to the Session's Court Judgement. Out of the amount, the first item of Rs.1308-15-6 which was lying in the court of the Resident Magistrate, F.C., Sirsi during committal proceedings was stolen away along with other sums in the cash box. This amount had never been credited to Government. It was in the possession of the court from where it was lost by theft. Government cannot, therefore, be held responsible for this amount so long as it was not actually credited to Government.

Plaint para 17:

In the Departmental Enquiry, negligence of the plaintiff has been proved. The Assistant Collector, K.D. took a lenient view, but the Collector differed from the view. It may also be pointed out in this connection that the plaintiff was also charged with having stolen an amount of Rs.10,200/- deposited with him on 1-4-50 for safe custody by the ~~bank~~ cashier-talati, Shri Y.M.Naik. The amount was, however, subsequently found. During this latter enquiry, it transpired that the

plaintiff's conduct had not been above reproach, and that he was irresponsible to a degree. The two cases were considered together in awarding punishment to the plaintiff. The two incidents together go to prove the negligent conduct of the plaintiff.

Recovery process under the L.R.C. is not illegal. The two bonds at pages 93 and 95 of File No.I are executed on 3-9-1940 and 10-12-1948 for Rs.500/- and 1500/- respectively. In these two bonds, the plaintiff binds himself to pay Government the amount of any loss or defaulcation in his account. Therefore, process under L.R.C. is permissible to the extent of Rs.2000/- in all.

Plaint para 18:

Government has every right to enforce both the bonds referred to above. Hence, this is not an illegal recovery.

Plaint para 19:

No remarks.

Plaint para 20:

Notice under section 80 C.P.C. does not refer to the grounds now alleged in paras 17 and 18 of the plaint.

Plaint paras 21 and 22:

No remarks.

Plaint para 23:

The plaint is not properly valued. The amount involved in this case is clearly Rs.1837-8-0. Court fee ought to have been paid on this amount and not on Rs.5/-. The plaintiff tries to escape his liability of paying the proper costs of Government when the suit is dismissed. He is not entitled to claim any of the reliefs.

P.T.O.

"ecessary documents in VI files accompany.

O.K. Signed
by Collector

M.S. Joshi 29-9 P.A.
Collector of Khulna.

29/9.

No. (2)

It appears that this letter is intended to be addressed to L.D. and not to N.D. This reference may also be made on No, to that Depr. with copies in THE SECRETARIAT FILES

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No to L.D. 8 - 7.10.53 with copies in 6 files

L.S.
9 OCT 1953

P.T. Issued as No. 15 L.D. with copies in 6 files
7-10-53

13 & 93

IN THE COURT OF THE CIVIL JUDGE, S. D., KARWAR. 13

Original Suit No. 156/1953.

Sadashiv Govind Naik, Aged about 53 years,
Village Shanbhogue, Resident of Kattinkon,
Taluka Karwar: Now residing at Haliyal.....) Plaintiff.

Versus

The State Of Bombay. ... ... Defendant.

Claim Rs. 5/- only

The Plaintiff abovedescribed begs to submit as hereunder:-

1. On or about 9-11-1948, the Plff. was posted as the Circle Inspector of Murkwad Circle in Taluka Haliyal.

2. This Circle was one of the biggest paddy-purchasing centres of the Kanara District at which the Government purchased paddy under the levy system.

3. From November 1948 to February 1949 (and for a long time thereafter too) neither Cashier-Talaties nor any other special staff had been appointed for this Circle or centre for the purpose of making payments to the persons from the 20 villages of the said Murkwad Circle who sold paddy to the Government at 3 different Godowns at Haliyal, Murkwad and Kavalwad; but the heavy burden of this payment-work (which has now been assigned to not less than 3 full-time Cashier-Talaties engaged exclusively on this payment-work) was thrown upon the Plff in addition to his usual and normal duties as the Circle Inspector of the said Murkwad Circle.

4. The Plff was to make payments only on the authority of and with reference to the grain-chalans brought by the paddy-sellers from and bearing the endorsements of the godown-keepers of the godowns at which they had sold paddy to the Government. Neither were the Invoices nor were any other independant intimations ever sent directly from the purchasing godown-Keepers to the paying-officers employed as the Plff. was. Thus there was absolutely no means of verifying or checking the correctness of such grain-chalans; so that the Plff had to depend entirely on and make payments only on the strength of the grain-chalans in the hands of the paddy-sellers.

5. It may be particularly noted here that the purchasing-centres or godowns were at Haliyal, Murkwad and Kavalwad at distances of about 2 furlongs, 6 miles and 12 miles respectively from the paying-centre at Haliyal from wher the Plff was to make payments.

6. The Plff had to make payments to 50 to 100 persons day. At times he had to make payments of Rs.20,000/- to Rs.30,000/- a day. And all this enormous work involved in making these many and heavy payments had to be done by the Plff in addition to his normal duties as the Circle Inspector of the said biggest Circle of the Haliyal Taluka. It can just be imagined what plight the Plff was put into at that time and how much overworked he was.

7. At such a time, during one of the rush days, on 24-1-1949 one Krishna Fakirappa Tamburkar of Janaga Village, produced before the Plff for payment a grain-chalan for 88 bags and 60 Lbs of paddy. At the same time about 50 grain-chalans were presented by different persons for payment. This was at about 5 to 5-30 P.M. and there was great rush. The Plff. duly checked all the grain-chalans and made all the necessary entries in the L.P.G. III. By the time this was completed it was about 10 P.M. so that the Plff, at the request of the paddy-sellers themselves, postponed payment till the next morning. Having no cause to disbelieve any grain-chalan or to suspect any forgery or foul play in any of them, the Plff honestly and after due care and attention and with due diligence made payments to all the paddy-sellers including the said K.F.Tamburkar as any man of ordinary prudence would have done under the circumstances and in the situation. The said K.F. Tamburkar was paid the price for 88 bags and 60 Lbs of paddy.

8. But it was later on discovered that the said Tamburkar had sold only 8 bags and 60 Lbs of paddy to the Government on 29-12-1948 at the Murkwad Godown and that the grain-chalan concerned had been forged to read 88 bags and 60 Lbs. Thus the said Tamburkar was overpaid an amount of Rs.1837-8-0 being the price of 80 bags of paddy.

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9. On or about 24-2-1949 this forgery and cheating were detected by the Audit Department; information was lodged with the Police; a search was made in the house of the said K.F.Tamburkar and an amount of Rs.1,240-15-0 was recovered from the house and another amount of Rs.68-0-6 was recovered from his person. Among some other things, 6 bags of seed paddy which the said Tamburkar had purchased from the amount overpaid to him as aforesaid, were also attached and sold to the Government for ..137-13-0. Thus in all Rs.1,446-12-6 were recovered from the said Tamburkar.

10. Then the said Tamburkar made a confession before the Magistrate at Haliyal; and in due course of law he was committed to the Sessions; but, in Sessions Case No.11/1949 of the Sessions Court of Kanara, the accused, having retracted his confession, was finally acquitted.

11. But the said amounts of ...1308-15-6 recovered in cash from the said Tamburkar and ..137-13-0 got by the sale of the paddy attached from him, were not returned to the said accused Tamburkar. He made an application that the said amounts should be returned to him; but his application was rejected and he was ordered to establish his claim in a Civil Court. The said Tamburkar has not yet taken any legal action in the matter although the period of limitation has completely run out long ago, The amounts are still lying with the Government.

12. The learned Collector of Kanara thereafter departmentally charged the Plff. with gross negligence and ordered an inquiry by the Assistant Collector, Karwar Division, Kanara. Sri. Fernandes, the then A.C.,K.D.,Kanara (who is now a Secretary in the Finance Department of the Deft.) held an elaborate inquiry and made a report that although the Plff was negligent to some extent, yet, under the particular circumstances of the case, his negligence cannot be said to be culpable in order to make it necessary to hold him responsible for the excess payment and he finally recommended that the Plff might be reverted to the Shanbhogi Cadre and that the loss caused to the Government might be written off.

13. But the learned Collector of Kanara, Sri. A.H.B. Tayabji, did not accept the said report of the A.C., but ordered that the said amount of loss of Rs.1837-8-0 should be recovered in full from the Plff as arrears of Land Revenue under Sections 25, 26 and 27 of The Bombay Land Revenue Code. The Plff appealed to the Government of Bombay; but his appeal was rejected. The Plff made a further representation to the Hon'ble the minister for Revenue to the said Government; and that too has been rejected.

14. It is nobody's case that the Plff had practised any fraud upon the Government or that he has dishonestly pocketed any amount or detained any amount belonging to the said Govt. It is only alleged that the Plff was grossly negligent in making the said over-payment; and the points urged against the Plff are the follwing:-

(1) It is urged firstly that the Plff ought to have suspected forgery from the fact that the words denoting 'to' in Kannada were written as ಅಂಕೋಲಕ್ಕೆ ಅಂತ instead of in the idiomatic style of writing them as ಅಂಕೋಲಾಕ್ಕೆ ಅಂತ . The lerned Sessions Judge had also relied upon this point. But unfortunately for the Plff. the Government did not produce at that time the evidence of the Register which shows that the particular godown-keeper concerned used to write such compound words seperately. There are a very large number of such instances and they were produced before the A.C., K.L., Kanara who held the Departmental Inquiry. It was also pointed out that many challans thus written had actually been paid out not only by the Plff on previous ocassions but by the others also and even by the Taluka Office itself in due course. Simply because in this particular case it happened to be a forgery, it cannot be said reversely that the Plff was negligent.

(2) Secondly it is urged against the Plff, he ought to have but did not note the figure 8, at the corner of the that grain-chalan denoting the number of gunny bags supplied to the seller. In the first place the number of gunny bags supplied to the seller were not to be noted in the chalans at all there being a seperate register for them; so that the Plff could not think of noting the number at all nor could he be expected in the ordinary routine to note that number, much less so on a heavy-rush-day like the one on which the payment in question was made.

(3) The third ground levelled against the Plff is that since the amount was a large one he ought to have been more care-ful. The Plff submits that he had made payments of larger amounts with the usual and ordinary care required under the circumstances and he did so even on this ocassion. He did exercise as much care and diligence as the ocassion required. As he had not the slightest doubt or idea or even suspecion that any forgery or foul play might have been practised, there was no reason at all to exercise extraordinary care.

(4) Fourthly it is alleged by the Collector that as the Plff was the Circle Inspector of the Village Janaga of the said Tamburkar for more than one year at the time of the said overpayment, the Plff ought to have known that the said Tamburkar was not at all such a big ryot capable of selling so much paddy to the Government. It is respectfully submitted that the said learned Collector had formed an erroneous impression in his own imagination without any basis. The Plff had never visited the said Janaga village at all till a few days after the said overpayment was made on 25-1-1949. The Plff was posted as the Circle Inspector of the said Kurkwad Circle (in which is included the said Janaga Village) only on 9-11-1948 and almost forthwith he was entrusted with the additional payment-work aforesaid. He had, thus, no time to visit the said village at all nor did he as a matter of fact visit the said village till after a few days after the said overpayment was made on 25-1-'49

(5) Lastly it is alleged that since the said grain chalan was in the Plff's custody overnight, he could have very carefully examined the same. It is submitted that the Plff was already overworked; that particular day he was working since 7 A. M. till 10 P.M. even without meals. Under the circumstances it is positively unreasonable to say or expect that the Plff ought to have worked even after 10 P.M. Further the question of again more closely examining the grain chalan with a view to find out any forgery or foul play would have arisen only if the Plff had any least suspecions about such things. But he had absolutely no reason to suspect any such mischief. Hence he had absolutely no special reason for again more closely examining the grain chalan which he had already examined with due care, attention and diligence.

15. The Plff submits that at the relevant time he had to do his own ordinary duties as the Circle Inspector of the biggest Circle of the Haliyal Taluka; he had in addition to do the work of 3 Cashier-Talaties; on the particular day the Plff had to deal with 50 grain-chalans and there was great rush for payment; he had worked right upto 10 P.M. in finishing the work of checking the grain chalans and making the necessary entries in the L.P.G.III; neither were the Invoices nor were any other kind of independant intimations ever sent to the Plff directly from the purchasing Godown-Keepers; the Plff had thus to depend wholly and solely on the grain-chalans in the hands of the paddy-sellers and had absolutely no other means of checking or verifying their correctness; the Plff had absolutely no reasons to suspect even remotely that any of the grain chalans might have been forged or tampered with and he had not even the slightest idea that any foul play was being ~~(illegible)~~ practised; under the circumstances the Plff had done all that he possibly could do and reasonably be expected to do; he had exercised due care and acted with due diligence as any person of ordinary prudence placed in the same position would have done and could reasonably be expected to do under the particular circumstances of the case. The Plff therefore submits that he has not been negligent at all and that he cannot at all be held liable for the loss caused to the Government by the said overpayment and that the Government is not entitled nor even justified in recovering the amount of loss from the Plff.

16. Even if it should be held that the Plff had been guilty of negligence and therefore is liable to make good the loss caused on that account, still the Plff submits that the Government has not been caused a loss of Rs.1837-8-0 at all as alleged by the Government. The amount of Rs.1308-15-6 recovered from the said Tamburkar in cash and the amount of Rs.137-13-0 got by the Government by the sale of the paddy attached from him in the concerned proceedings themselves are still lying with the Government and in all fairness the Government will have to apply this amount of Rs.1446-12-6

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in all, in part reimbursement of the loss caused to it. Thus the Plff might perhaps be held liable, if he could be held to be liable at all, to make good only the balance of about Rs.390/- and odd. Further, the Government could have and ought to have taken proper proceedings in proper time to recover from the said Tamburkar the amount overpaid to him and the Government should have thus minimised the loss to itself and the liability of the Plff as far as it could do. The Government having failed to do so cannot now seek to saddle the Plff with the entire liability or any liability at all.

17. In any event, even assuming (but without admitting) that the Plff is liable to pay to the Government any amount whatsoever on account of his said alleged negligence, still the Plff further submits that the Government will have to establish the Plff's negligence and get ascertained the amount of damages which the Plff is liable to ~~[illegible]~~ pay to the Government and only then will the Government be entitled, if at all, to recover such ascertained damages from the Plff in due course of law; and all this has to be done by the Government by, only by, recourse to a civil suit in a competent Court of Law. The Government cannot take the law into its own hands and by a summary short-cut seek to recover as arrears of land revenue under Sections 25, 26 and 27 of the Bombay Land Revenue Code, any amount from the Plff. on account of the Plff's said alleged negligence. It is nobody's case that the Plff has "detained" any amount due to the Government. Further, the Plff has not executed any bond under Financial Rule No.40. It is therefore humbly submitted that none of the provisions of the Bombay Land Revenue Code can be aimed at the Plff.

18. The Government is attempting to take recourse to high-handedness and is trying to recover from the Plff the said amount of Rs.1837-8-0 alleged to be due to the Government on account of the Plff's said alleged negligence by putting up for sale and selling Plff's immovable

properties under Sections 25, 26 and 27 of the Bombay Land Revenue Code; in other words the Government is trying to recover the said amount of loss alleged to be caused to the Government by the Plff's said alleged negligence as arrears of land revenue. The Plff submits that the Government has absolutely no right under any provision of any law thus to recover any amount from the Plff on account of the Plff's said alleged negligence.

19. The Plff respectfully submits that in this plaint the word "Government"has been used to mean the Government of the State of Bombay, i.e., the Deft.

20. The Plff. has caused a due lawyer's notice dated 28-4-1953 addressed to the State Of Bombay to be served on the Collector of Kanara, by registered post on 30-4-1953. All the requirements of law and of Section 80 of the Code Of Civil Prodedure have been duly complied with.

21. The said overpayment was made at Haliyal; the Plff is a resident of Kattinkon; the immovable properties of the Plff which the Deft. is seeking to sell are situated at Kattinkon; and as all these places are within the jurisdiction of this Senior Division Court, this Court has jurisdiction to try and dispose of this suit.

22. The cause of action for this suit arose on or about 18-11-1952 when the Plff's appeal to the Government was rejected and on or about 24-3-1953 when the learned Collector of Kanara refused to stay the said sale proceedings. The said sale-proceedings are still being continued.

23. The reliefs claimed in this suit have been valued at Rs. 5/-.

24. The Plff therefore prays that:-

(1) An injunction be issued against the Deft. restraining the Deft. not to recover from the Plff. as arrears of land revenue or otherwise than by resource to a Civil Suit any amount whatsoever on account of the alleged loss caused to the Deft. by or on account of the Plff's said alleged negligence

(2) this relief is valued at Rs.5/- only

24. The P'ff therefore prays that:-

(1) An injunction be issued against the Deft. ordering the Deft. not to recover from the Plff either as arrears of land revenue or otherwise than by recourse to a civil suit any amount whatsoever on account of the alleged loss or damage caused to the Deft by or on account of the Plff's said alleged negligence;

Or

(2) If the above relief cannot be granted to the Plff, then, in the alternative, it be declared that the Plff's conduct in making the said overpayment to the said K.F.Tamburkar is not negligence in law so as to make the Plff liable for the said alleged loss or damage caused to the Deft; and consequent upon the granting of this declaration, an injunction be issued against the Deft. ordering the Deft. not to recover any amount from the Plff on account of the ~~said alleged loss or damage caused to the Deft.~~ on account of the said overpayment;

Or

(3) If neither of the reliefs aforesaid can be granted to the Plff, then, in the alternative, it be declared that the Deft. is not entitled to recover from the Plff any amount at all or any amount exceeding Rs.390-11-6 on account of the said alleged loss or damage caused to the Deft by reason of the said overpayment; and consequent upon the granting of this declaration, an injunction be issued against the Deft. ordering the Deft not to recover from the Plff any amount at all or any amount exceeding Rs.390-11-6 on account of the loss or damage alleged to be caused to the Deft. by the Plff's said alleged negligence in making the said overpayment;

(4) The Deft. be ordered to pay to the Plff the full costs of this suit and the Court may also be pleased to grant to the Plff against the Deft such other and/or further reliefs as the Court deems fi

Each one of the reliefs mentioned in (1) (2) and (3) of this para No.24 have been valued at Rs.5/- only. Total valuation is Rs.5/-only.

Haliyal; Dated 29-7-1953. (Sd)
Plff.

I, Sadashiv Govind Naik, the Plaintiff in this suit, do hereby declare that all the contents of this plaint are true according to my own personal knowledge.

Haliyal; Dated 29-7-1953. (Sd)
Plff.

Presented on 30-7-1953 by

(S.C.)

Advocate for the Plaintiff.

COLLECTOR'S OFFICE
KANARA.
File No.
Date of Receipt 20 AUG 1953

Dec. 1-8-53

No. 1068-E.V
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, (Bombay No.1), 15th June 1954

Subject:- Kanara Civil Suit No. 136 of 1953.

MEMORANDUM.

The District Government Pleader, Karwar, is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which is sent herewith in advance.

Papers of the case in 6 files received from the Collector accompany

Submitted for signature o/c See

Mr [illegible] Schwarb for Remembrancer of Legal Affairs.

To The District Government Pleader, Karwar

mw
15.

L.R. L.D. No. 10413/E dt. 22/4/54

Sent to Press on 23/4/54.

23/4

Urgent Plum

27 x 29

From:

The District Government Pleader, Kanara,

To.

The Remembrancer of Legal Affairs, Bombay.

L.D. 1 - FEB 1954

Subject: Original Suit No. 156-1953.

Yr. 44 of 1954 Kanara. dated 28th January 1954.

Sir,

As desired by your letter No. 1068-E dated 16th January 5
I am submitting herewith a copy of the draft written statement in the above suit, for your a preval. This suit has been fixed on 22.2.54 for framing issues 22.2.54 Hence this matter may please be expedited Sd.

Yours faithfully,

Dist.Govt.Pl.Kanara.

2868
2/2/54

Shri Chitre may examine the W/S

Submitted

W.S appears Me

in order

mre

3/2/61

Crb (ML) @ 2.17

In the Court of the Civil Judge. Senior Division Karwar. 17/47/31

O.S. No. 156-1953

Sadashiv Govind Naik ..... Plaintiff.

The State of Bombay ..... Defendant.

Written statement submitted on behalf of the defendant:

1. The claim has not been properly valued for court-fees and jurisdiction. The suit is one for injunction and in the alternative for certain declarations without any consequential relief. The basis of the suit is the Collector's order that Rs.1837-8-0 should be recovered from the plaintiff and his surety under sections 25.26 and 27 of the L.R.Code. The amount is thus an ascertained sum and the plaintiff cannot avoid payment of court-fees on this ascertained sum by undervaluing his claim. This is not a case where plaintiff can arbitrarily fix his claim either for court-fees or for jurisdiction. In the case of the alternative claim for mere declaration, the plaintiff is bound to pay the fixed court-fee on the sum claimed from him. This suit is therefore not maintainable unless full court-fee is paid under the Court-Fees Act. The plaintiff is also bound to show the amount mentioned above as the claim for pleader's fee and juriddiction. This question will have to be treated as a preliminary point.

2. The Collector's order challenged by the plaintiff is dated 17-4-51. The plaintiff gave his notice under section 80 on 28-4-1953. This suit appears to have been filed on 30-7-1953. The main object of filing this suit is to get a declaration that the defendant is not entitled to recover from the plaintiff any amount as ordered by the Collector. The plaintiff ought to have filed this suit within the prescribed period of the Limitation. The present claim is not in time. The suit is barred by Limitation.

3. It is true that the plaintiff was C.I. of Murkwad in Haliyal taluka and that he was entrusted with the work of making payments to the cultivators for the paddy sold by them to the Govt. But it is not correct to say that the Murkwad circle was one of the biggest paddy purchasing centres. The target fixed and

the net purchase for the year 1948-49 at Murkwad purchasing centre were 20000 B.Maunds and 20766 B.Ms. respectively which stand no comparison to the corresponding figures at Haliyal centre viz., 120000 B.Mds and 132520 B.Ms. respectively. The plaintiff had never complained of over-work. He was assisted by the Shanbhogs and patels of his circle.

4. During the period in question there was no system of making payments through casher talathis. Throughout the district there was the uniform practice of making the payment to the paddy vendors by the Circle Inspectors in their respective circles. Some of these vendors used to come with their challans directly to the Sub-Treasury at Haliyal and receive payments in the Taluka Office. In order to facilitate early payments to the vendors the Circle Inspector was required to go to the different villages and make payments. But on all such occasions, he used to receive assistance of the village officers. On 24-1-1949 Shri Shamba Nagesh Shetty, Shanbhog of Nandigadde, was assisting the plaintiff. Hence, it is not true that plff had to do the work of 3 full time casher-talathis independently of anyother work. The very fact that plff did this work without any complaint clearly showed that he could cope with the work. The casher-talathi system was introduced next year throughout the district.

5. There were printed grain challans which were issued by village officers to each cultivator. These challans were serially numbered. The first part thereof mentioned the quantity of paddy which the cultivator concerned was required to sell to the Government. this was fixed after considering the total yield obtained by each cultivator & his requirements Empty bags for the required quantity of Levy used to be issued by the Village officers and their numbers used to be noted at the top of the challan. The second part consisted of an endorsement from the G.Ks. as to the actual quantity received by him in his Go-Down after actual weighment. There used to be stock-registers maintained by the G.Ks. which clearly showed what quantity of paddy of each quality was received by him every day from such cultivators and under which challan number. Therefore if the plaintiff had any doubts he should not have made the payment in question. He could have verified the figures from the go-down register and satisfied himself before making actual payments. Therefore it is

incorrect to say that there was absolutely no means of verifying or checking the grain challans or that the plff had to depend entirely on grain challans for making payments. The plff had sufficient data to rouse his suspicion and to with-hold payment in this case till he was convinced of the correctness of the entries in the challan. His failure to do so amounts to gross negligence. His conduct as revealed in his statements during the trial of the sessions case clearly goes to prove his gross negligence.

6. Ordinarily, payments are not made at the Head-Quarters. Such payments are made by going to the different centres so as to facilitate the payments to the vendors on the spot and also to obtain co-operation and help from the village officers of the respective centres.

7. It is not correct to say that the plff was required to make definite number of payments per day. It depended on his ability and convenience. Similarly, the total sum dispersed each day depended on several circumstance there used to be few paddy vendors selling large number of bags of paddy or vice-versa. Therefore the contents of para 6 of the plaint are exaggerated. They are denied. The challan in question was handed over to the plaintiff on the evening of 24th, at noon 5 P.M. and was in his possession till about 10 A.M. next morning when payment was made. The plff had thus sufficient time to scrutinize the challan in question. Had he done so he would have noticed the tamperings discussed below :

8. On 29-12-1948 the vendor in question had gone to the shanbhog of the Firka and offered to sell only 8 bags of paddy. This is clear from the fact that only 8 empty gunny bags had been given to him by the shanbhog and it had been clearly mentioned at the top of the challan that 8 empty gunny bags had been given to the vendor. So also in the first column of this challan the shanbhog had clearly endorsed that only 8 bags of paddy were to be sold to the Government by the said vendor. This figure of 8 was quite clear and

clean. The counter-foil of this challan remained with the shanbhog. An appropriate entry had been made in the Register of empty gunny bags showing that Krishna (the vendor) had received only 8 gunny bags. This entry of 8 empty gunny bags ~~& the entry made by the shanbhog in the first column were~~ sufficient to put the plaintiff on guard not to make the payment for 88 bags.

9. On 31-12-1949 vendor Krishna delivered 8 bags of paddy to the Go-Down Keeper . The GK made an entry in the Go down register which shows that the paddy delivered to him weighed only 8 bags and 60 lbs. This go-down-keeper filled in and signed the second part of the challan showing both in letters and figures that he had received only 8 bags and 60 lbs of paddy. On 24-1-1949 vendor Krishna took the challan to the plaintiff to receive payment in the evening. It is true that about fifty such vendors had gone to the plaintiff on the same day ~~at about 6 P.M.~~. The plff started verifying the challans with the help of Nandigadde shanbhog - Shamba - who was also examined as a witness in the sessions case. It is plff's case that this verification work was not over till 8 P.M. and that therefore he had asked all the 50 vendors to come next morning. The challan in question thus remained with the plaintiff for more than 12 hours. If the time was insufficient the plff could have asked the vendor to come next day after-noon. All this happened in Hariyal proper. The plaintiff could have asked for additional help from the taluka office if he so desired. Yet the plff asserts that the tampering of the challan had not come to his notice and that he paid to Krishna Rs. 2029-7-3 the full price of 88 bags to the Vendor. He has endorsed this payment in the 3rd part of the challan. There is also a voucher for this payment. The mistake was detected during the audit by the Accounts Supervisor on 24-2-1949.

10. According to the plaintiff himself the tampering in the challan must have been made before it was presented to him for payment. The figure of 8 empty bags supplied to Krishna had not been tampered with. But the figure of 8 in the first part of the

challan had been changed to 88, by adding another figure of 8 after the first figure written by the shanbhog. This latter figure 8 looked suspicious and ought to have raised suspicion in the mind of the plaintiff. In the second ~~xhaxixxxxf~~ column of this challan the figure 8 written by the G.K. had been altered to 88 by adding another figure 8 behind the figure written by the G.K. and this additional figure of 8 had been written in a suspicious manner. The shanbhog had written in words " 8 bags " in Kannada. But the word eighty appeared to have been added in kannada behind this word 8. In Kannada the word 88 is written as "Embattentu (ಎಂಬತ್ತೆಂಟು) whereas the words in the altered form appeared as "Embattu - yentu " (ಎಂಬತ್ತು ಎಂಟು). The figure of 8 added in the first part of the challan is in thicker ink and smaller in size. These facts would not have escaped the notice of the plaintiff had he been careful in scrutinizing this challan. These ~~facts~~ circumstances ought to have raised a suspicion in the mind of any person that the challan had been tampered with. In the committing magistrate's court the plff stated that he had asked the vendor as to the number of bags he had sold to the Govt but in the sessions court he stated that that he had not asked the vendor any such question. The sessions court observed that the plaintiff had not done his duty properly and that he was guilty of gross negligence. The copy of the judgment had been sent to the collector who had to start the departmental proceedings against the plaintiff. The plaintiff was specifically charged with being grossly negligent in the discharge of his duties in paying the said amount to vendor-Krishna. The plff preferred to be heard in person and claimed that the oral enquiry ~~was~~ should be held in his presence. The plff was accordingly heard and the oral enquiry was held in his presence. ~~by the Collector~~.

11. It is not the plff's case that the enquiry held by the Collector is improper and illegal. The Collector's order is perfectly legal. The Collector came to the

conclusion that the plff had been grossly negligent in his duties in making excess payment of R.1837-8-0 and was therefore responsible to make good the loss to the Govt. The Collector came to the conclusion after careful scruitiny of the facts and evidence and after hearing the plaintiff. Gross negligence of the plff in the discharge of his duties is thus clearly established and ~~it~~ P[illegible] cannot escape from his liability to make good the loss. The plff is not entitled to any relief unless this order passed by the Collector is declared ultra-vires. No such relief has been claimed and therefore the plff's suit is not maintainable.

12. The plff asserts that the amount of loss caused to the Government cannot be recovered from him by resorting to the provisions of sections 25,26 and 27 of the L.R.Code. The plff's case is that he had not " detained " any amount due to the Government and that he had not executed any bond under Financial Rule 40. This contention is not true or proper. The amount of loss caused to Government as a result of plff's negligence can be recovered from him under the provisions of the L.R.Code as arrears of Land Revenue. The plff was an officer or a person serving in the Collector's department within the meaning of section 26. Like other C.Is He had been entrusted with the work of making payments to the vendors of paddy ~~like all other Circle Inspectors~~. For that purpose he was in possession of public money. The Collector ~~had~~ held that the Govt. suffered loss of Rs.1837-8-0 as a result of plff's gross negligence. It was public money due by the plff within the meaning of section 26 ~~xxxxxxxxxxx~~ and can be recovered as arrears of Land Revenue.

13. On his appointment as Shanbhog the plff. had passed one security bond for Rs.500/- on 15-8-1940. He had passed another bond for R.1500/- on 16-12-1948 on his appointment as Circle Inspector Under the terms of both these bonds the plff bound himself to pay to Government the amount of loss on defalcation in his account. The plff also agreed that the said bonds would be effective in connection with the duties of anyother office to which he might be subsequently transferred or entrusted with. The plff forfeited the amount of the

bonds as a result of the excess payment of the public money entrusted to him ~~negligently made by him~~ and the amount to the extent of the amounts specified in the bonds can be recovered from him under the provisions of the Land Revenue Code.

14. The plff further contends that his liability for loss is limited to Rs.390/- only inasmuch as ~~Mad~~ Govt. had come in possession of a sum of R:1446-12-6 which had been attached in the house of vendor-Krishna who was the accused in sessions case No.11-1949 The amounts referred to in paras 9 and 11 can never be treated as amounts recovered out of the misappropriated amount. They were amounts liable to be returned to vendor-Krishna in view of his acquittal. The plff. cannot claim benefit of these amounts. Out of these two amounts sum of Rs.1308-15 -6 was lying in the court of the Resident Magistrate F.C. Sirsi during the committal proceeding but this amount was stolen away along with amounts of ~~the~~ muddemal in other criminal cases. This amount had never been credited to Government as alleged by the plff. It was in the custody of the Court. It was stolen from the custody of the court When the trial commenced before the Sessions Court these amounts were not before the Court. Hence the Sessions Court could not pass any order for return of these sums to the accused-Krishna. After the disposal of the case accused - Krishna applied for an order for return of these sums to him. But the Sessions Court held that it could not pass any orders for disposal of these sums which were not before the Sessions Court as muddemal property. Accused-Krishna has been acquitted and in ordinary course he was entitled to the return of these sums. The fact that these sums were lost when lying in the Court cannot justify plff's claim for deduction. If Krishna failed to obtain necessary orders from the Sessions Court the plff cannot claim benefit thereof.

15. The grounds alleged in plaint para 14 are not tenable. The sessions Court judgement sufficiently answers all these points. There was absolutely no reason for the plff to commit an error of judgment as the alterations in figures and letters in the challan were sufficient to create suspicion in the mind of any person. The plff knew Vendra-Krishna and as Circle Officer he had visited Janara several times. On 4-1-1949 he had visited Janara and remarked in the visitor's book that he had tried for procurement of paddy. He must have looked into the levy list of the village and noticed that the heaviest levy demand from an individual village did not exceed 70 bags. Vendra-Krishna was a cultivator of a petty area and the plff knew well that he could not be expected to give such heavy levy of 70 bags. The plff's contentions are not bona-fide.

16. Notice issued under section 80 C.P.C. does not refer to the grounds now alleged in paras 17 and 18 of the plaint. So far as these allegations are concerned there was no notice issued to the Government as required by section 80. Hence the suit is defective for want of notice under section 80 so far as paras 17 and 18 of the plaint are concerned. The plff is therefore debarred from raising contentions now made in paras 17 and 18 and also from claiming any relief on the grounds alleged in these two paras.

17. The other contentions and averments made in the plaint are not true. They are denied.

18. It appears that the plff has filed this suit with a view to delay the proceedings started against him. The suit deserves to be dismissed with costs.

No. 2465-E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 4th February 1954.

MEMORANDUM:

With reference to his letter No.44 dated 28th January 1953, the District Government Pleader, Kanara, is informed that the draft of the written statement forwarded by him for approval is in order and he may file the written statement accordingly.

e/c

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Kanara,
Karwar.

KGK.
3/2

issued
4/2

submitted for approval
3/2 55

2. The papers of the Departmental Enquiry are submitted to Government under this office letter even number dated 29-9-1953 in connection with the Civil Suit filed by the ex-Circle Inspector, Shri S.G.Naik. Necessary sanction for payment of leave salary as reported by the Prant Officer may please be accorded.

A0/11942/54
LD with P 8/1
(A TN)

o.c.signed
by Collr.

P.A.
Collector of Kanara.

30/4.

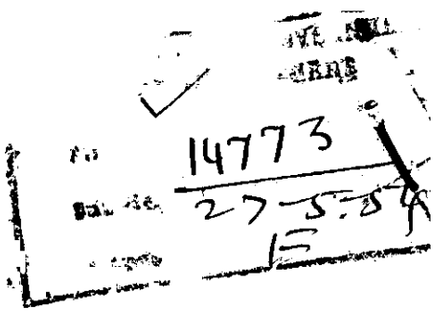
P.D/E

Submitted

2 Due ref quoted at A above was been passed on U.O. to L.D. with case ffs and R.D. ffs No 0/11942) on 8-10-53. The L.D. may be requested to return the R.D ffs and also spare the case ffs if no longer reqd.

24/5/54

A.E.



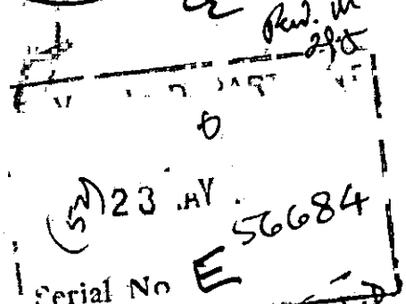
L.O.R. to L.D. dt- 25-5-54

RI No. 14773 L.D. 27.5.54

Submitted with reference to the revenue Dept. note above.

The Dept. may be informed that papers of the case in 6 files have been forwarded to the D.G.P., Kanara vide their office memo. No 1068-E5/15.1.54

L.D file No. 24166 containing the R.D ffs. may be sent to Revenue Dept. with a request to keep/take out the copies of the required ffs. and then to return & transfer the same to the Dept. as regards required for the record of the Dept.



Pl send U.O. to L.D (received on 6-6-54)

27/5 Sol (Hi/L) U.R to R.D No 13408/E 27/5 dt 27/5/54 with L.D file No 24166

Letter

To

The Secretary to Govt.,

Revenue Department, Bombay

No. S 93/3/1124 Karwar, 18-4-1954.

Subject:- Sanction under Rule 154 of the B.C.S.Rs,

I have to report that in the Departmental enquiry held against Shri Sadashiv Govind Naik Offg. C.I. in Haliyal Taluka for disappearance of paddy amount from the custody of a Cashier Talathi in Haliyal Taluka under mysterious circumstances, he was suspended from duty by the Collect of Kanara with effect from 6-4-1950 and after the conclusion of the enqui was reinstated on 16-5-51 and the period of suspension was ordered to be treated as leave admissible under the Rules under Kanara Collector's No. 8845 dated 21-5-1951.

The period of suspension from 6-4-1950 to 5-8-1950 was therefore ordered to be treated as leave on A.P. and that from 6-8-1950 to 16-5-195 leave on half A.P. under this office No. S 93/3/1124 dated 30-11-1951.

Under Rule 154 of the B.C.S.Rs no extra cost can be incurred by the grant of pay and allowances under Rule 152 of the B.C.Rs, if the peri in respect of which it is to be paid exceeds 6 months, without the sancti of Government.

In this case the period of suspension which has been ordered to treated as leave admissible under the Rules exceeds 13 months and as such Govt. sanction would be necessary for the payment of the differential amount due to him as leave salary. The amount of leave salary payable to him after deducting the subsistence allowance paid to him comes to Rs. 215-11-0.

I therefore request that Government may be moved to accord sanct for the payment of the amount.

Prant Officer K.D.Kanara.

Submitted through the Collector of Kanara.

******

No.8845(pt)
Karwar, 30-4-1954.

Submitted to Government in the Revenue Department, Bombay.

REVENUE DEPARTMENT
File No.
4 MAY 1954
Serial No. E 47398

S.No 56730 p.57 ante. 41/45 R.D.G.

The Coller. has requested to accord Govt. sanction to defend the suit filed by Shri S.G. Naik. It is for the L.D; which deptt in considering the matter, to dispose of this. These pp. received with L.D. nor dt. 22-5-54 may be returned to that deptt. for disposal.

L.D. note

No. 56684. p.59 ante

Please See the Coller. of Kanara's endt. No. 8845 (PT) dated 30-4-1954, requesting p.59 ante to accord Govt. sanction to pay to Shri S.G. Naik an amount of Rs. 215-11-0 on account of difference between the leave Salary and the suspension allowance (already paid). The pp. of the deptl. enquiry as stated by the L.D. in its note dated 27-5-1954 have been sent to the D.G.P. Kanara. Those pp. are required for according Govt. sanction for the payment of the amount of Rs. 215-11-0. Receipt of those pp. may be awaited till 10-7-1954 as the pp. now forwarded by the L.D. bearing that deptt No. 24166. and containing defence proceedings only are not useful for according Govt. sanction for the payment of the amount. The pp. 59 & 60 may be detached and kept along with a copy of this note for reference to L.D. regarding the receipt of the pp. of the d.e. and the L.D. file file No. 24166 with the Coller of Kanara's reminder dt 26-5-54 may be returned to the L.D.

A.11

1855/50
1/7/54

L.D.
30 JUN 1954

p.57 ante

lms
21/6/54

DS 23/6

Note by the LD Dtd 28.6.54

Legal Department. 6347

Submitted with ref. to R.D. note overleaf.

The papers referred to at 'A' in the R.D. note at overleaf have been sent to the Distt. Govt. Pleader Kanara under this officexletter No.1068/E Dt.15-1-54 for conducting the defence of the suit. According to the usual procedure the D.G.P. will return these papers to the Local Officers concerned when the suit is decided, which would take a long time.

If the R.D. requires the papers urgently, the Deptt may call for the same from the D.G.P. intimating him that the same will be returned to him when done with.

S.S.

Solr(M.L.)

U.O.R. to R.D. No.16201-E Dt. 6h July 1954.

REV[illegible] DEPARTM[illegible]
File
- JL 1954
Serial No. E 72045

Rw. 8/7

Office of the R.L.A.

Attention of the Revenue Department is invited to this office U.R. to R.D. No. 13408/E dated the 27th May 1954 and that Department is requested to return L.D. papers immediately.

REVENUE DEPARTMENT
File No. D 49
27 SEP 1954
Serial No E 106959

for Remembrancer of Legal Affairs.

U.R. to RD. No. 22239/E dated the 27th September 1954.

hsp/24/9 56684

Submitted w.r.t. l/s o.n.s dt 22.5.54 & 22.6.54

2. The L.D. papers received with their U.O. No 13408/E dt. 29.5.54 have already been returned to that dept. This may, however, be shown to us in the L.D.

28748 6/10/54

4/10/54

Thirty L.D. dated 4-10-54

L.D

Submitted with reference to the R.D. note overleaf.

The pps. do not seem to have been received by the Dept. The R.D may be requested to state the No and date under which L.D pps. have been returned to the Dept.

11/10

11-10-54

(ML)

U.R to R.D No 23275/E

REVENUE DEPARTMENT
File No.
12 OCT 1954
Serial No. E-7/2002

12-10-54

Rd. on 13-10-54

Re issue
Rd. L.D Pps
21-11-54
Chm 6/11/54
14/11/54

4F/51 RD(E)-6

Please see the

✓ P. 63/ante LD. Mus. No. 16201-E dt 6-7-54

X P. 65/ante and No 23275-E dt. 12-11-54.

2 Copies of Pages 59 to 67 in these papers may be taken & these papers may be returned to L as requested by Hqrs dept

Necessary action on the corr.

Δ P. 59-60/ante of Karachi's endt. dt 30.4.54 will be taken separately.

Com 2-11-54

2/11/54

A.C.H.

UOR 52.D dt. 5-11-54.

31855 8/11/54 E

L-9 6-NOV 1954

From:

The District Government Pleader, Kanara.

To

The Remembrancer of Legal Affairs, Bombay.

No. 555 of 1954. Karwar, dated 17th September 1954.

Sir,

Civil suit No.156-1953 filed by Sacashiv Naik has been fixed for issues tomorrow. The plff therein was attending to the work of making payments to paddy vendors. He made a over-payment of Rs.1800 and odd to one Krishna. The number of bags sold was actually 8. But the figure 8 had been changed to 88. Krishna was prosecuted for using a forged document with a view to receive over-payment. But he was acquitted. The C.I. who made the over-payment was departmentally dealt with. The Collector came to the conclusion that the overpayment was due to his negligence and ordered recovery of the amount under section 27 and 26 L.R.Code. The C.I. has filed the present suit asserting that provisions of sections 26 and 27 are not applicable to the case.

In the Times of India Edition dated 11-3-1954 there was a report of a case filed by National Tube Wells Limited against the State challenging an order passed under the Bombay City Land Revenue Act, The petition was dismissed by Justice Tendulkar but the report says that the petitioner had filed an appeal. The result of the appeal has not been report in any of the News Papers.

In O.S.No.156-1953 the plff contends that the proper remedy for the Government was to file a suit in a civil court and obtain a decree against him and that Govt cannot invoke sections 26 and 27 of the L.R.C. He further relies upon letter No.410/3778/Est.D.O.Civil Supplies Bombay dated 13th July 1951. It appears that there was a similar recovery process. It says that the authority of sections 26 and 27 of the L.R.C. cannot be invoked or extended to such a recovery from the V.Os. No rulings have been cited therein.

I, therefore, seek your guidance and help as to how to meet the view expressed in the letter quoted above. Secondly, I request you to supply me with a copy of the High Court judgment in theabove-quoted case to see if it can help ~~im~~ us in the present suit, as well as any-other authorities.

Yours faithfully,

Dist. Govt. Pl. Kanna.

Submitted for orders.

21/5

Sol. (HL)

The D.S.P may be requested to forward to the office a copy of the letter referred to in the above letter. He should also report whether the applicant in the writ petition is also disputing the ~~suit~~ property involved in the suit. A copy of the petition of the D.S.P may also be called for.

Refer 3 days

21/7

No. V/22132/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 25th September 1954,

Subject:- Civil Suit No. 156/53.

Memorandum:

With reference to his letter No. 555 dated the 17th September 1954, on the above subject, the District Government Pleader, Kanara is requested to forward to this office a copy of letter No. 410/3778/Est-D.O. Civil Supplies Bombay dated the 13th July 1951 referred to in para 3 of his above mentioned letter. He is informed that the appeal filed in Tube Wells case is also dismissed. But the point involved in that case was different. His attention is invited to para 3 of the grounds of defence.

OC Seen
for Remembrancer of Legal Affairs.

To

The District Government Pleader, Kanara.

hsp/24/9

Submitted for signature
24/9
Sol (MS)

Legal Department.

R.I. No.14773 dt. 27-5-54.

Submitted with reference to the Revenue Deptt. note above.

The Deptt. may be informed that the papers of the case in 6 files have been forwarded to the D.G.P.\Kanara under this office memo No.1068/E dt. 15-1-54.

L.D. file No.24166 containing the R.D.pps. may be sent to that Department with a request to take out the copies of the required pps. and then to return the same to this Dept. as they are required for the record of this Dept.

Id/-.

Solr.(M.L.) Sd. E.P.B.
27.5.

U.R. to R.D., No.13408/E, dt. 27th May 1954

Issued 27/5

Wkt L.D file No 24168 Kanara C.S No 158/53

Awaiting return of this RD

28/5

SS 28/5

Office of the R.L.A.

Attention of the Revenue Department is invited to this office U.R. to R.D. No. 13408/E dated the 27th May 1954 and that Department is requested to return L.D. papers immediately.

for Remembrancer of Legal Affairs.

U.R. to RD. No. 22239/E dated the 27/15 September 1954.

hsp/24/9

Submitted for approval

27/9

Sol (HL)

issued
27/9.

Acknowledgement of bills in K,V

RI No 28746 dt 6.10.54

MR to RD No 23275/E dt 12-10-54

From:

The District Government Pleader,Kanara,Karwar.

To

The Remembrancer of Legal Affairs, Bombay.

No. 592 of 1954. Karwar, dated 30-9-1954.

Subject: Civil Suit No.156-1953.

Sir,

As suggested in your letter No.22132/E dated 25th instant, I have sent herewith copy of letter No.410/3778/EstD dated 13th July 1951. The plaintiff had submitted this copy to the Collector along with one of his application . He relies upon this Circular letter. Hence I had to refer the matter to you.

Yours faithfully,

Dist.Govt.Pl.Kanara.

Submitted

Pl. see D.S.P's letter
No. 555 dt 17.9.54

Pl. also see this office
letter to the D.S.P dt 25.9.54.

Neither the P.P has forwarded
a copy of letter No. 410/3778/Est.
dt 13.7.51

For orders

13/11. SDO (HQ)

No. 410/3778/ Est.(D).

Civil Supplies Dept.
Bombay Castle, 13th July 1951.

To

The District Magistrate Ratnagiri

Subject: Recovery of Government dues from Supply personnel.

Reference : K.Your No.STG/AC/SR 15 dated the 25th April 1951

The relevant sections so far as any recovery to be made from Revenue Officers under the Land Revenue Code are concerned are sections 25 to 30 of the said Code. Under section 26, the Collector is authorised to take proceedings to recover any publi money due by him in the case of any Officer serving in his Department in the same manner and subject to the same rules as a laid down for the recovery of arrears of land revenue from defaulters and to issue a search warrant if necessary. Sec.27 fixes the liability of the sureties for being proceeded against for recovery of any such defaulted amount. These sections refer, however, to recovery from any Officer of the moneys or papers or properties detained by him, on which the Collector may have a claim. The authority of these sections cannot, therefore, be extended to the recovery from a Village Officer, Circle Inspecto Circle Officer or other Revenue Officer, of a sum which may be adjudged by the Collector as due from him on account of negligen in the performance of his duties. It is only in respect of any property or money detained by a Revenue Officer that these sections will come into play.

In respect of any sum due from an officer on account his negligence the relevant authority whether he is a Revenue Officer or a Civil Supplies Officer would be the Bombay Civil Services (Conduct Descipline and Appeal) Rules 33 of these Rules down the penalties to be inflicted upon any member of the subordinate services for good and sufficient reasons, and amongst these is " recovery from the pay of his whole or part of any pecuniary loss caused to Government by his negligence or breach of orders; only recovery from his pay is authorise under this rule. Recovery from the property of the Government servant can, however be enforced by virtue of the bond which any servant in charge of cash or other Government property is

required to execute under Financial Rule 40. T. last paragraph of this bond authorises Government to recover from the Govt. servants and his sureties as arrears of land revenue and any sums which may be held due from a person out of whatever may have come in his possession or controlm by reason of his office. Any loss which may have been sustained by Government on account of any default or negligence on the part of the Government servant would be recoverable from him and the sureties only under this bond. There is another form of the security bond used in the case of the Govt. servant(specimen enclosed) who are not required to handle any cash or other property on behalf of Government. Any Government Officer who has executed a Bond in this form is liable to account for any loss that Govt may sustain as a result of his default or negligence.

An order for the recovery or the sum from a Government servant on account of negligence can be passed under the Bombay Land Revenue Code 1879 only in respect of any money or property detained by him illegally, while any money falling due from him on account of negligence can be recovered under the bond executed under Financial Rule 40 as an arrear of land revenue, if necessary. If the bond executed in other form a specimen of which is enclosed recovery will have to be effected by recourses to the Civil Court only. Whenever, on other hand, an order is passed under the Bombay Civil Services (Conduct Discipline and Appeal) Rules. recovery can only be effected from the pay of the officer but not otherwise if there is in the case also a bond under financial Rule 40, the sum can in addition be recovered under that bond.

As regards the period of appeal, the period prescribed in the Bombay Civil Services (Conduct, Discipline and Appeal) Rules is one month from the date of the order. There is no question of the time limit for any appeal in respect of an order passed by the Collector under the Bombay executed under financial Rule 40.

Sd.

Deputy Director of Civil Supplies
(Districts) Bombay.

...

True Copy
Bombay
DGP

~~B.T.B~~ C

61

INDIAN POSTS AND TELEGRAPHS DEPARTMENT

No. 1986

Recd. at H 14½ M.	Sent at H. M.	Office Stamp
From VWY 3	To	PTO SECLEX 17 NOV
By C	By	

LL (11-45) Kmnvsa Knn 17 ste 30

Seclex Bombay

Please enlighten regarding Civil supplies letter 410/3778 copy forwarded with my letter 592 dated 30th september in civil suit 156 of 1953

District Government Pleader

32932
18/11/54 E

L.D. 17 NOV 1954

MGIFP[illegible]—703—8-8-53—45,000 Bks.

From:

The District Government Pleader, Kanara.

To

The Deputy Collector of Kanara.

No. 2 of 1955. Karwar dated 3rd January 1955.

Sir,

I regret to inform you that O.S.No.156-53 filed by Sadashiv Govind Naik Ex-Circle Inspector of Haliyal against the State has been decreed on the 29th December 54. A private copy of the judgment has been enclosed herewith.

The main ground for the decision of the Court is thatunder sections 25 and 26 it is necessary that the act of negligence had been committed by the C.I. in his capacity as a Revenue Officer as defined in section 3(1) of the Land Revenue Code. The Court has held that the act of negligence was not in connection with any of the duties of the C.I. as a Revenue Officer, but it was in connection with an additional work of the Supply Branch entrusted to him. The Court has rejected my contention that the C.I. had disbursed the amounts in his capacity as a C.I. and has signed below the payments in his capacity as a C.I. The relevant document has not been referred to in the judgment at all. The two agreements relied upon by us clearly cover any loss incurred and was not restricted to any Revenue work only. This point has not been properly appreciated. I had relied upon section 188 under which every revenue officer is bound to carry out the directions given by his superior officers. The relevancy of that section has not been referred to in the judgment at all. Lastly I had argued that in view of the two ~~agreements~~ security bonds this was an item recoverable as arrears of land revenue under a special contract contained in the security bond, and therefore it was covered by section 187. This aspect of the case has not been touched in the judgment at all.

The second point urged by the Court is that sections 25 and 26 have to be read together and therefore any loss caused to the Government cannot be recovered from

the C.I. unless the amount had been " detained " by him within the meaning of section 25 L.R.Code.

In the plaint the second point only had been specifically mentioned. It was on that ground only that plaintiff pleaded the order of the Collector to be illegal. In the absence of a specific pleading on the first point my contention was that such a new point could not be raised in the absence of pleading or an issue on the point. But my contention has not been accepted.

In his application to the Collector the Plff C.I had referred to a Circular issued by the Supply Branch holding that an officer doing Supply Branch work has to execute a bond under Financial Rule No.40 and if no such security bond has been passed under Financial Rule No.40 as ordinarily under sec.25 L.R.C. remedy lies only for an amount " detained ". I had requested the R.L.A. for enlightening me on this Circular and sought directions as to how to face this point. Inspite of repeated reminders no reply was received from the R.L.A's office.

The last point urged by me was that the suit was time-barred under Article 14 of the Limitation Act as no relief could be granted to the Plff unless the Collector's order was set-aside. No such relief had been sought. But the Court has held that the Collector's order was illegal and therefore it was not necessary to get it set-aside.

Thus this case is bristling with law points. The question therefore is as to whether an appeal should be filed against the decree and judgment. I, therefore suggest that you may be pleased to refer the matter to the R.L.A. for his opinion. As the appeal has to be filed within 30 days this matter may kindly be treated as urgent. I have applied for certified copy of the decree and judgment. If the appeal is to be filed I may be permitted to draw an Rs. 100/- for expenses as advance

Yours faithfully,

Dist.Govt.Pl.Kanara.

No.3/55 dated 20th January 1955.

Copy submitted to the R.L.A.Bombay together with a copy of the judgment.

Immediate.

No.2312/E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 31st January 1955.

Subject:- C.S.No.156 of 1953.

MEMORANDUM:

With reference to his letter No.2 dated the 3rd January 1955 addressed to the Collector of Kanara, copy endorsed to this office, the District Government Pleader, Kanara is informed that Government has decided to file an appeal in the District Court against the decision of the Civil Juddge (Senior Division), Karwar dated the 29th December 1954. He is, therefore, requested to take early steps to file an appeal in time.

2. A copy of office note along with papers of the case in 6 files received from the Collector of Kanara under his letter No.8845 dated the January 1955 are sent herewith.

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Kanara,
Karwar.

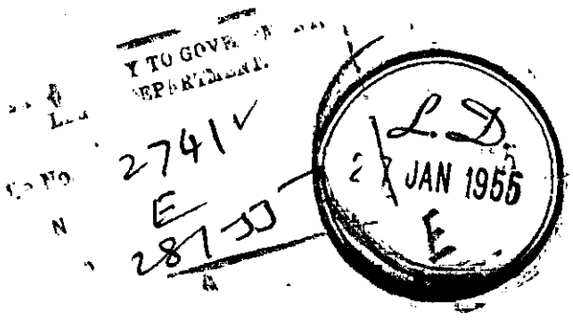
Copy forwarded with compliments to the
Collector of Kanara, Karwar.

MAP/-
31/1.

To

The Remembrancer,
of Legal Affairs, Bombay.

No.8845. Karwar, -1-1955



Subject: Recovery
Naik, Shri S.G.,,,, from Civil Suit in the Matter of ...

Reference: Decree of the Civil Court Senior Division, Karwar in the Original Suit No.156 of 1953.

In this case Shri S.G.Naik formerly Circle Inspector Murakwad had filed a suit against Government praying for an injunction restraining Government from recovery of an amount of Rs. 1,837-8-0 by coercive measures.

The District Government Pleader Kanara's who was authorised to conduct the suit, informs that the suit has been decided against Government. He further states that the case is bristling with law points and that the question of preferring an appeal may be considered. (Copy of District Government Pleader's letter No. 2 dated 3-1-1955 is enclosed with a private copy of the Judgement)

The papers of the case in 6 files are enclosed.

The question of preferring an appeal in this case as requested by the District Government Pleader may kindly be considered.

Collector of Kanara.

Received on 30-7-1953. 69/85/71

Registered on 1-8-1953.

Decided on 29-12-1954.

Duration: 1 year; 4 months and 28 days.

Ex.No.50.

In the Court of the Civil Judge, S.Dn.,Karwar.

Pleaders.

Original suit No. 156-1953.

Shri M.R.Kamat.

Sadashiv Govind Naik, about 53, village shanbhog, resident of Kathinkon, taluka Karwar now residing at Haliyal. ... Plaintiff.

Versus.

Dist.Govt.Pleader.

The State of Bombay. .... Defendant.

Claim: Rs.5/- only for all purposes except pleaders' fees.

Rs. 1837-8-0 for pleaders fees.

This is a suit against the State of Bombay praying primarily for an injunction or in the alternative for certain other reliefs:

The Plff in this suit was formerly a shanboog.He was promoted as Circle Inspector and was posted to Kurkwad Circle in Haliyal Taluka on or about 9-11-1948. There in addition to his duties as a Circle Inspector he was entrusted with the work of making payments to cultivators for paddy supplied to Government under the levy system. On 24-1-1949 one Krishna Fakirappa Tamburkar of Managa village produced before him for payment a grain chalan for 88 bags and 60 lbs. of paddy, but in fact the actual quantity of grain supplied under the chalan was only 8 bags and 60 lbs. That grain chalan was apparently a tampered document; but we are not concerned in this suit as to who tampered the document. Payment against the grain chalan was made on the next day by Plff and the amount paid was the price of 88 bags and 60 lbs. paddy amounting to Rs.2029-7-3 whereas the price actually due was only for 8 bags 60 lbs. amounting to Rs.191-15-3. Thus the said Tamburkar was overpaid an amount of Rs.1837-8-0 being the price of 80 bags. This mistake was detected by the Audit Department on 24-2-1949 and thereupon a complaint was made to the police

against the said Tamburkar from whom an amount of Rs.1446-12-6 was recovered in various ways. The said Tamburkar was further prosecuted but in the end he was acquitted by the Sessions Court. Meanwhile the amount which had been recovered from him was stolen away while it was lying in the Court of the Resident Magistrate, Sirsi as Muddemal during the committal proceedings and when the trial took place before the Sessions Judge there was no Muddemal as such before it. The Sessions Court however ordered the return of all the property attached or recovered from Tamburkar to him. But Tamburkar, however, did not claim back the amount.

After the acquittal of Tamburkar in the Sessions Court the Collector initiated a Departmental action against the Plaintiff and he charged him with gross negligence in the discharge of his duties as he made such an over-payment without due care and attention. He further issued a rule against him as to why the excess amount of Rs.1837-8-0 paid by him should not be recovered from him under the provisions of Sections 25 and 26 of the Land Revenue Code. In the end after the departmental enquiry the Collector reverted him to his former post as shanbhog and further ordered action to be taken against him and his sureties for the recovery of the amount of Rs.1837-8-0 under sections 25,26 and 27 of the Land Revenue Code This order was passed on 17-4-1951 (Vide Ex.37) Thereafter Plff appealed against the order to the Government of Bombay but his appeal was rejected. He further made a representation to the Honourable Minister for Revenue which too was rejected. Thereafter the Collector started to recover the amount from Plff under the provisions of the Land Revenue Code by attaching his immoveable properties and putting them up for sale. Plff therefore has come to Court with this suit.

The case made out by him in his plaint is that he was never guilty of gross negligence that in fact he was actually over-burdened with work and that the over-payment was made in the honest belief that the chalan was genuine. So he submits that the Collector's finding about his alleged negligence was not warranted by either the facts or circumstances of the case.

7/ 67

He further goes on to submit that in any event the Government was not the proper forum to sit in judgment over his negligence and assess damages in respect thereof. His submission is that the Government ought to have established his negligence in a Court of law andgot ascertained the sum of damages which he was liable to pay on that account. The Government according to him was not authorised to recover the amount from him under the provisions of sections 25,26 and 27 of the Land Revenue Code as it was nobody&s case that he had " detained " any amount due to the Govt. Alternatively he submits that he at any rate was not liable to pay Government more than Rs.390/- as Government had already recovered Rs.1446-12-6 from Tamburkar which amount was still lying with Government as Tamburkar had not taken back the amount. He therefore prays for the following reliefs :

1. An injunction be issued against the Deft ordering the Deft not to recover from Plff either as arrears of land revenue or otherwise than by recourse to a Civil suit any amount whatsoever on account of the alleged loss or damage caused to the Deft by or on account of Plff's said alleged negligence;

Or

2. if the above relief cannot be granted to the Plff then in the alternative it be declared that the Plff's conduct for making the said over-payment in the said case of Tamburkar is not negligence in law so as to make the Plff liable for the said alleged loss or damage caused to the Deft and consequent upon granting this declaration and injunction be issued against the Deft ordering the Deft not to recover any amount from Plff on account of the said alleged loss or damage caused to the Deft on account of the said over-payment;

Or

3. If neither of the reliefs aforesaid can be granted to the Plff then in the alternative it be declared that the Deft is not entitled to recover from the Plff any amount at all or any amount exceeding Rs.390-11-6 on account of the said alleged loss or damage caused to the Deft by rason of the said over-payment and consequent upon the granting of this

declaration and injunction be issued against the Deft ordering the Deft not to recover from the Plff any amount at all or any amount exceeding Rs.390-11-6 on account of the loss or damage alleged to be caused to the Deft by Plff's said negligence in making the said over-payment.

2. The State of Bombay which is the Deft in this case resists Plff's claim on the following grounds (Vide its written statement Ex.13). Firstly, it contends that the claim had not been properly valued for the purposes of Court-fees and jurisdiction. Secondly, it contends that the notice given under Section 80 was defective and therefore the suit based on such a notice was incompetent. Thirdly, it contends that the suit was time-barred under Article 14 of the Limitation Act as it had been filed more than a year after the Collector's order which was passed on 17-4-1951. Fourthly, it contends that the loss that was caused to Government was due to the negligence of the Plff. Fifthly, it contends that the order for recovery passed by the Collector under the provisions of Sections 25,26 and 27 Land Revenue Code, was a valid order as Plff was an officer or a person serving in the Collector's Department within the meaning of section 26 of the Land Revenue Code. Sixthly, it contends that the Plff was liable to pay the whole amount and not merely Rs.390-11-6 as contended by him. In this connection it is submitted that Plff's claim for the appropriation of Rs.1446-12-6 recovered from Tamburkar towards the loss was unsustainable as the amount could not be treated as amount recovered out of the lost amount. That amount, it is further submitted was liable to be returned to Tamburkar in view of the acquittal order passed by the Sessions Judge. Therefore, Plff it is said cannot claim benefit of the amount. For all these reasons it prays for the dismissal of Plff's suit with costs.

3. The first two contentions regarding Court-fees and want of proper notice under sec.80 were tried as preliminary issues and they have been substantially over-ruled (Vide order passed below Ex. 25)

4. Thereafter the following issues were set down for hearing at Ex.27:

073 84

1. Whether Plff proves that the over-payment of Rs.1837-8-0 made by him to Krishna Tamburkar was not due to his negligence but was only an error of judgment ?

2. Does he prove that Government is not entitled to claim ~~xxxxx~~ re-imbursement of the said amount from him or his sureties ?

3. Does he prove that the Collector's order dated 17-4-1951 is not legal and valid ?

4. Is Plff entitled to claim any of the relief's sought without getting this order set aside ?

5. Is Plff's claim not in time ?

6. Is Plff entitled to claim deduction of Rs.1446-12-6 attached from Krishna Tamburkar ?

7. Is Plff entitled to the declaration and injunction sought ?

8. deleted ....

9. deleted ...

10. Has the Collector jurisdiction to recover the alleged damages as arrears of Land Revenue without recourse to a Civil Suit ?

11. Is it necessary that the Plff should get the orders of ~~of~~ the Collector set aside ?

12 What order ?

5. ~~Xxxxxxxxx~~ Findings.

1. No. 2. Not pressed. 3. Yes. ✓

4. Yes 5. The claim is in time.

6. No. 7. As per order.

8. .. deleted. 9. .. deleted. 10. No. ✓

11. No. 12. As per order

Reasons.

6. On the day of hearing Plff's pleader by his Jahiri, Ex.47 submitted that he had no oral evidence to lead and that further he did not press for the relief claimed in plaint para 24(2), Below that Jahiri the Government pleader also endorsed that he too had no oral evidence to lead. In view of this Jahiri it is no longer necessary to consider Plff's ground of attack that the over-payment made by him was not due to his negligence but only due to his error of judgment. That part of his

case goes away. The only material point that now remains for our consideration is, whether the Collector had authority under the provisions of Sections 25,26 and 27 and Revenue Code to pass the order for recovery of Rs.1837-8-0 from Plff which he has done. If the Collector had such authority under the provisions then obviously Plff will be out of Court in view of his Jahiri on issue no.1; but if not the Plff in my opinion is bound to succeed.

7. It is the submission of Mr.Kamat the learned pleader for Plff that the Collector had no authority to act under sections 25,26 and 27 Land Revenue Code against the Plff because the provisions of these sections were applicable only to the actions of Revenue Officers as defined in Sec.3(1) of the Code and that too in cases where such Revenue officers had detained public money or papers or other properties of the Government with them. In view of this submission it is necessary to note down the contents of the provisions so far as they are relevant to our case.

8. Section 3(1) of the Land Revenue Code defines Revenue Officer thus:

> "'Revenue Officer' means every officer of any rank whatsoever appointed under any of the provisions of this Act and employed in or about the business of the land-revenue or of the surveys, assessment, accounts, or records connected therewith and for the purposes of Sections 25 and 26 includes a village officer appointed or officiating under any of the provisions of the Bombay Hereditary Offices Act or the Mamlatdars Act, 1887 "

The relevant portion of Section 25 runs thus

> " The Collector or the Superintendent of Survey or any other officer deputed by the Collector or Superintendent of Survey for this purpose shall , in all cases in which he may have a claim on any revenue officer or on any person formerly employed as such in his department or district for public money or papers or other property of the Crown, by writing under his official seal, if he use one, and signature, requires the money, or the particular papers or property detained to be delivered either immediately to the person bearing the said writing, or to such person on such date and at such place as the writing may specify .... "

95 211

Then it is followed by Section which runs thus :

> " The Collector of his own motion, if the officer or other person is or was serving in his Department and district, and upon the application of the Superintendent of Survey, if such officer or person is or was serving in the survey department in his district, may also take proceedings to recover any public moneys due by him in the same manner and subject to the same rules as are laid down in this Act for the recovery of arrears of land revenue from defaulters, and for the purpose of recovering public papers or other property of the Cronw may issue a search warrant and exercise all such powers with respect thereto as may be lawfully exercised by a Magistrate under the provisions of Chapter VII of the Code of Criminal Procedure ..."

Section 27 is not relevant to ourr case as it deals with the sureties.

9. The first thing to be noted is that Section 25 to 30 form one family group and they are contained in Chapter III. Now it can be seen from the wording of section 25 that it empowers the Collector only in cases where he may have a claim on a Revenue officer or on any other formerly employed Revenue officer in his Department, to demand from such person any papers or money detained by him which constitutes Government property. So two things are essential to attract this Section in order to empower the Collector to make the demand and these are:- (1) The person against whom he makes the demand must be a Revenue officer in present employment or a past employee; and (2) that such officer must have detained with him the money or papers which constitute Government property. Only when these two conditions are fulfilled can the Collector proceed under this Section. This section is followed by sec.26 and it contemplates further action by the Collector in case the person contemplated under sec.25 fails to make good the demand. The further action contemplated under this Section is the recovery of the public money as arrears of land revenue and search warrant in cases of papers or other property. But the

submission of the learned Government pleader with reference o Sec.26 is that it also contemplates of persons other than revenue officers and that further the money contemplated under that section is money due by such officer as opposed to money " detained " in Sec.25. With due respect to him I should say that both these sections are concerned only with Revenue officers who are either in the present employment or who were in past employment. As observed by me earlier both these sections belong to one group and further sec.26 as it reads is merely a continuation of Sec.25. Sec.25 is primarily concerned with the demand of detained money or property and it also further contemplates of arrest and detention in order to enforce the demand. In case all these fail, then Sec.26 gives further authority by way of search warrant and other coersive measures permissible under the Land Revenue Code. These extended powers given under Sec.26 are only with a view to get back the detained property or money. The words ' moneys due by him used in the section 26 are with reference to ' money detained by him in Sec.25 and nothing further. The Sections therefore do not lend a meaning tried to be extracted by the learned Government Pleader. They do not certainly cover all possible cases of persons and moneys due.

10. Let us now consider Plff's case in view of these provisions. Mr Kamat's first submission in this behalf is that Plff while he was making the disbursement of money under the grain levy system was not acting in his capacity as a Circle Inspector so as to be called a Revenue Officer within the meaning of the term as defined in Sec.3(1) of the Land Revenue Code but that he was carrying out an extra burden imposed upon him by the Supplies Department of the Government and that therefore the provisions of Sec.25 could not be brought into play at all in his case regarding the over-payment made by him which was done while carrying out the duties of the Supplies Department. Secondly, he submits that the alleged over-payment made by him could in no sense be called ' detention' of money by him and so too the provisions could not be brought into play. He therefore attacks the order for recovery of the money made by the Collector as ultra vires his powers under the Land Revenue Code. The learne

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Government pleader on the other hand tries to resist the argument mainly on two grounds : He in the first place submits that such a case was not made in the plaint and therefore it could not be countenanced at the time of the argument. Secondly, he submits that Plff's appointment as Circle Inspector was made by the Collector that further Plff had executed bonds, Exs. 31 and 32 under the provisions of the Land Revenue Code that for all these reasons he acted essentially as a reveune officer though he was entrusted with the additional work of the Supply Department and that therefore he was essentially a Revenue officer within the contemplation of Sections 25 and 26 of the Land Revenue Code. He further submits that the loss caused by the Plff could be recovered as moneys due by him under Sec.26 of the Code.

11. With due respect to the learned Government pleader I should say that his submissions in substance are unsustainable. His first submission is that the plaint does not contain an attack against the order passed by the Collector on this count. True no doubt there are no specific words in the plaint to the effect that the Collector's order was bad because it was not passed against a Revenue Officer as such within the meaning of Sections 25 and 26 of the Land Revenue Code but all the same there is the specific attack in the plaint that the Collector had no jurisdiction to pass such an order as he had done under the sections, which in substance means that the provisions of the said sections did not give any authority to the Collector to pass the sort of order that he had passed against Plff. When thus the very authority of the Collector was attacked with reference to these sections it necessarily involved the consideration of all the questions required

by the section to be fulfilled. The Government too knew very well about this position and this is made clear by the following pleading contained at para 12 of its written statement, Ex.13 which is : " The Plff was an officer or a person serving in the Collector's department within the meaning of section 26 like other Circle Inspectors." This plea makes it quite clear that the Government was all along aware that in order to justify the action of the Collector under Sections 25 and 26 it had to show as a condition precedent for attracting the provisions of those sections that Plff was a Revenue officer within the meaning of those Sections. The position is made much more clear by the following interrogatory adminstered by Plff and the answer given by Deft. Plff in his query no.27 at Ex.21 asked the following question :

> Q. Is it not a fact that Plff made the said overpayment while acting in the capacity of an officer of the Supplies Department and not while acting in the capacity of a revenue officer ?

Defendant's reply to that question was

> The Plff was working in the Revenue Department and he had passed the security bonds already produced in this suit at serials 1 and 2 of our document list. He was one of the persons recruited purely for the Supply Branch work. When working as C.I. in the Revenue Department he was entrusted with this additional duty of making payments to the paddy vendors. The Plff was not ~~in~~ on the pay-list of the Supply Branch nor was his name in the list of the Supply Department Staff . " (Ex.24).

So we can fully see that the ground of attack now taken by Plff does not contain any element of surprise so as to prejudice the defence of the Government. On the contrary the plea was there already and the Government was fully aware of it. I am therefore not prepared to accept the submission of the Government pleader on this point. But before dismissing the submission made by him I should say a ~~word~~ word about the rulings shown by him on this point. In this connection he has invited my attention to the rulings contained in B.K.D. Aktieselskab V. Secretary of State, A.I.R.1940 Bombay page 294 and Bayabi V. Hajinoor Mahomed, 11 B.L.R. 237. The substance of both these rulings is that where a ground of attack is essentially different from the one made out in the plaint it could not be

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countenanced at the time of the argument without an amendment of the plaint. But that is not the position in our present case as the ground of attack was there already though in an indirect form and the Government were very well aware of this fact and even tried to meet it Therefore I do not think these rulings can help the Government in any way.

12. Now I take up the next submission made by the Government pleader which is that the Plff was acting essentially as a Revenue Officer while he made the over-payment. The Plff no doubt was appointed as Circle Inspector by the Collector and he executed two bonds to Government one of which was prior to his appointment, which is at Ex.31 and the other after his appointment which is at Ex.32. The first bond purports to be executed under Section 23 of the Land Revenue Code and that being so it is with reference to Secs.25 and 26 The second bond refers to a Government notification of the Revenue Department, but it does not show whether it was executed under the provisions of the Land Revenue Code. Even apart from these we are here concerned with the definitic of a Revenue Officer as given in Sec.3(1) which we have already quoted elsewhere. It means - every officer of any rank ... employed in or about the business of land revenue or of the Surveys, assessment, accounts or records connected therewith. Only a Revenue officer performing these duties can be proceeded against under secs. 25 and 26. But the order passed by the Collector under these Sections against the Plff was not for any laches on his part in performing the duties shown in Sec.3(1). On the other hand the laches for which he was punished was altogether in respect of duties not contemplated under this section. The alleged overpayment for which he has been held responsible was in respect of duties with which he had nothing to do as Revenue officer but had been entrusted with in addition to his

work as Revenue officer. Those duties clearly belonged to the Supply Department which he had been asked to perform. So then those duties being altogether of a different character he could not be held responsible for any laches in respect of those under section 25 or 26 which are concerned mainly with his duties as Revenue officer. But here again there is a further qualification and that is even in the performance of his duties as Revenue officer he could be proceeded against under these sections only in cases where he detained with him Government property and not for any loss caused by his actions. The second bond, Ex.32 no doubt, covers all cases of loss caused by him to Government. But that bond by itself cannot give any authority to the Collector to act under section 25 or 26.Therefore, acting as a Revenue Officer while he made the alleged over- payment concerning the sale of paddy with which he had nothing to do as a Revenue officer within the meaning of the term as defined in sec.3(1) of the Land Revenue Code.

13. In view of these conclusions the position that finally emerges is that Plff neither acted as a Revenue Officer while he made the overpayment nor was he guilty of detaining any property belonging to the Government by making the said overpayment. So when both these ingredients are absent, the Collector had absolutely no authority to proceed against him wither under sec.25 or 26 of the Land Revenue Code. The order passed by him is clearly illegal and void on the face of it.

14. A similar conclusion would be reached even if we concede the learned Government Pleader's first objection regarding the want of pleading about the act of over-payment done by the Plff not being in his capacity as a Revenue Officer. In that case we will at the most have to assume that the act done by the Plff was in his capacity as a Revenue officer; still the point is, whether he was guilty of detaining the money without which element the provision of Section 25 cannot come into play at all. If that provision does not come into play, Sec.26 as noted already also canno come into play

because it is merely a continuation of Sec.25, and the words ' moneys due ' by used in that section are with reference to the word moneys detained' used in the previous section 25. The order for recovery made by the Collector, as it stands, is so made on the assumption that Plff by his act caused unnecessary loss to the Government and that such a loss could be recovered from him by proceedings against him under secs.25 and 26. Now causing loss is by no means detaining Government property. Therefore too the Collector had absolutely no authority to pass such an order for recovery of money which he did against Plff under secs.25 and 26. So considered any way the order suffers from basic want of authority in the Collector to pass such an order and therefore it is clearly null and void.

15. It now remains to be seen whether the suit is barred by limitation under sec.14 of the Indian Limitation Act. It is the contention of the learned Government pleader that the suit in essence is for setting aside the order passed by the Collector against Plff on 17-4-1951 for the recovery of Rs.1837-8-0 and so being it ought to have been filed within one year from the date of the order under Art.14 of the Limitation Act, and that nothaving been done, the suit was time-barred. In support of his contention he relies upon the rulings contained in Chhotubhai Vs.Secretary of State, 22 B.L.R. 147; Ganesh Vs. Secretary of State. 22 B.L.R. 212; Gangu Vs. Maharaj Das, 15 Lahore 389 and B.K.D.Aktieselskab Vs. Secretary of State, A.I.R.1940 Bombay 294. But in my opinion, this case is not affected by the bar of limitation under the said Article and also the rulings quoted by the learned Government pleader are not applicable to it. If we look at the plaint prayers we can see that the Plff nowhere seeks any relief for setting aside the order of the Collector. On the other

hand he ignores the order altogether treating it as null and void and prays for an injunction restraining the Government from recovering the money as arrears of land revenue. So since no order is sought to set aside, the Government cannot invoke the provisions of Art.14 to its aid. The Article in essence refers to acts or orders done in the exercise of powers legally exercisable by the executive; in other words the Article applies to those acts or orders which required to be set aside and not to those which have been passed by an usurpation of jurisdiction. To put it in another way the Art. does not apply to cases where the order basically suffers from want of jurisdiction and is therefore totally ultra vires. As remarked by their Lordships of the Privy Council in Laxmanrao Madhavrao V.Shrinivas Lingo, 51 Bombay 830 P.C. if the order was illegal the Plff was not bound to file a suit to set it aside but was entitled to wait until it was enforced against him and the attempt to enforce it against him gave him a good cause of action. That is exactly the position in the present suit. The Plff in this case has come to Court when on the basis of the illegal order, the Government tried to effect the recoveries as arrears of land revenue. The following other rulings may also be read which go to support this view. They are : Secretary of State V. Faredoon, A.I.R.1934 Bombay 434; Rasul Khan Hamad Khan V. Secretary of State, 39 Bombay 494 and Secretary of State V.Gulam Mahaboob, 42 Madras 673. So I am not prepared to hold that the provisions of Article 14 are applicable to the facts of the case so as to make it time-barred. As the claim is not otherwise contended to be time-barred, I hold that the suit is in time.

16. In view of these findings the third alternative prayer made by Plff does not need to be considered. Finding if necessary, would be as below : The case made out by Plff under this prayer is an alternative case. He submits that in case he is held liable for the loss of Rs.1837-8-0 still he would not be liable to pay up all the amount in asmuchas Rs. 1446-12-6 have already been recovered from Tamburkar and they have been lying in the Sessions Court undisbursed to him; that further the said Tamburkar had not

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taken any action in time to take back the amount from the Court and so the money should be appropriated first towards the loss and only for the remaining balance the Government can take any claim against the Plaintiff. The Government pleader's reply to this is that the amount recovered from Tamburkar was his and was to be returned back to him according to the order passed by the Sessions Court. Further that amount lying in the First Class Magistrate's Court Sirsi before committal, was stolen away. So for these reasons the Plff could not claim the benefit of this amount. The contention in my opinion, has great force. Now the money that was recovered from Tamburkar was to be returned to him in view of the order of the Sessions Court. So, that money could not be considered as forming part of the lost money. If Tamburkar has failed to take back the amount, that does not alter the character of the amount which in essence is his by virtue of the order passed by the Sessions Court. Therefore I do not think Plff can advantageously ask for the appropriation of it for his benefit.

17. But as noted by me already Plff succeeds on the basis ground that the procedure for recovery followed by the Government was altogether ultra vires of the Land Revenue Code under which the Government has acted and is purporting to act still. I therefore grant Plff the prayer for injunction made at para 24(1) of his plain..

Order.

The Deft is hereby restrained from recovering the amount of Rs.1837-8-0 from Plff as arrears of land revenue in pursuance of the order passed by the Collector of Kanara on 17-4-1951 against him.

Deft to pay Plff the costs of the suit and bear its own.

29th December 1954.

Sd.M.M.Shirkol,
C.J.S.Dn.,Karwar.

Solr. (M.L.)

Suit No.156 of 1953 of the Court
of the Civil Judge, Senior Division
at Karwar.

The above suit was brought for an injunction to restrain Government from recovering from the plaintiff either as arrears of land revenue or otherwise than by recourse to a civil suit any amount whatsoever on account of the loss or damage caused to Government by the plaintiff's alleged negligence.

2. The plaintiff was a Circle Inspector at Murkwad in Haliyal taluka. The duty of making payments to agriculturists who sold their grain at the Government godowns was assigned to him during the period from November 1948 to February 1949. Agriculturists who sold their grain at the Govt. godowns used to be supplied with grain challans by the godown keepers showing the quantity of grain sold by them. The agriculturists used to hand over these challans to the Circle Inspector who paid them the price of the quantity of grain shown in the challans.

3. On 29-12-1948 one Krishnappa Fakirappa sold 8 bags and 60 lbs. of paddy at Murkwad godown. The godown keeper supplied him with a challan showing the quantity of paddy sold by him at the godown. On 24-1-1949 he presented the challan to the plaintiff at about 5 p.m. There was a great rush of agriculturists who had sold their grain at Government godown for receiving payment from the plaintiff at that time. It appears that in the challan presented by the said Krishnappa Fakirappa the quantity of grain sold by him had been unauthorisedly altered from 8 bags 60 lbs. into 88 bags and 60 lbs. As there was no sufficient time.

time left to make payment on 24-1-1949 the plaintiff asked Krishnappa Fakirappa to come the next morning to receive the payment. The next morning the plaintiff paid him the price of 88 bags and 60 lbs. Thus there was overpayment made of the price of 80 bags of paddy worth Rs.1837-8-0 to Krishnappa Fakirappa. This overpayment was detected on 24-2-1949 when the accounts of the plaintiff were audited. The said Krishnappa Fakirappa was prosecuted before the Sessions Court on charges of forgery and cheating in respect of the alteration of the quantity of grain shown in the challan. He was, however, acquitted on both the charges.

4. Then a departmental inquiry was started against the plaintiff on the charge that he was negligent in making the overpayment to the said Krishnappa Fakirappa on the challan which, on the very face of it, showed unauthorised alterations. The Assistant Collector who held the inquiry reported that though the plaintiff was guilty of negligence in making the overpayment he need not be called upon to make good that amount. The Collector, however, took a different view. He was of the opinion that the said amount should be recovered from the plaintiff as arrears of land revenue under sections 25 and 26 of the Bombay Land Revenue Code and made an order accordingly on 17-4-1951. From that order the plaintiff preferred an appeal to Government but the appeal was dismissed on 18-11-1952.

5. The plaintiff sought three alternative reliefs in this suit. Before the trial commenced he gave up his claim for the second alternative relief. The Civil Judge who tried the suit has rejected his prayer for the third alternative relief. Hence the suit is practically limited to the first relief sought therein, viz., an injunction to restrain

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Government from recovering from the plaintiff the aforesaid sum of Rs.1837-8-0 as arrears of land revenue or otherwise than by recourse to a civil suit.

6. The suit was defended on the lines of the brief at slip A. 12 issues were framed in the suit; of them Nos. 1, 5 and 10 are important. They are as follows:-

"1. Whether plaintiff proves that the over-payment of Rs.1837-8-0 made by him to Krishna Tamburkar was not due to his negligence but was only an error of judgment ?

5. Is plaintiff's claim not in time ?

10. Has the Collector jurisdiction to recover the alleged damages as arrears of Land Revenue without recourse to a Civil Suit ?"

7. On the question whether the plaintiff was guilty of negligence in making overpayment of Rs.1837-8-0 to Krishnappa Fakirappa, the Civil Judge has held in favour of Government. He has held that the plaintiff was guilty of negligence. On the other two questions, however, he has held in favour of the plaintiff. The Civil Judge has granted the plaintiff an injunction restraining Government from recovering a sum of Rs.18[illegible]-0 from the plaintiff as arrears of land revenue in pursuance of the Collector's order dated 17-4-1951. His judgment is at slip B.

8. It will be seen that the important question in this case is whether the amount of overpayment made by the plaintiff can be recovered from him as arrears of land revenue under section 26 of the Bombay Land Revenue Code. Section 25 provides that if the Collector has any claim on any revenue officer for public money detained by him the Collector may by writing under his official seal require the revenue officer to deliver the public money immediately to the person specified therein. Section 26 provides that if any public

monies...

monies are due by a revenue officer the Collector may take proceedings against him to recover the monies in the same manner and subject to the same rules as are ~~x~~ laid down for the recovery of arrears of land revenue. It will be seen that the words used in section 25 are "public money detained by the revenue officer";whereas wordingx of section 26 is "public monies due by a revenue officer". It was urged on behalf of the plaintiff before the Civil Judge that the wording "public money due by a revenue officer" used in section 26 has the same meaning as the wording "public monies detained by a revenue officer" used in section 25. In support of the argument the plaintiff relied on a letter dt. the 13th July 1951 addressed by the Deputy Director of Civil Supplies to the District Magistrate, Ratnagiri (which is at slip C). In that letter no authority is quoted for the proposition that "monies due by a revenue officer" has the same meaning as ~~the~~ "monies detained by a revenue officer". I think that the proposition is not correct in law. However, the Civil Judge accepted the proposition as correct. He further held that the money that was overpaid by the plaintiff in this case to Krishnappa Fakirappa could not be treated as money detained by the plaintiff,and that hence proceedings for recovery of the same from the plaintiff as arrears of land revenue could not be taken under section 26. I think that the Civil judge's decision on the point is not correct.

9. Section 3(1) of the Bombay Land Revenue Code defines the term "revenue officer" to mean ~~revenue~~ an officer appointed under any of the provisions of the Code and employed in or about the business of land revenue or of the surveys, assessment, accounts or records ~~xxxxx~~ connected therewith. The plaintiff in making payment to the agriculturists who sold

grain...

grain to Government was not employed in or about the business of the land revenue or of the surveys, assessment, accounts or records connected therewith. The Civil Judge, therefore, held that the plaintiff did not make the overpayment in this case as a revenue officer but as an officer of the Civil Supplies Department. On this ground also the Civil Judge held that it would not be possible to recover the amount from the plaintiff under section 26 of the Land Revenue Code. The point is not free from doubt. It may, however, be noted that the Civil Supplies Department had not its own whole independent staff. Some revenue officers were assigned the duties of the Civil Supplies Department in addition to their revenue duties. When the plaintiff made the overpayment in this case he was borne on the permanent establishment of the Revenue Department and was assigned the additional duty of making payment to agriculturists who sold grain to Government. It can be argued that simply because he was assigned some additional duty of making payment to the agriculturists he did not cease to be a revenue officer.

10. The plaintiff executed two security bonds - one dated 15-8-1945 for Rs.500/- and the other dt. 16-12-1948 for Rs.1500/- in favour of Government. By these bonds he bound himself to pay to Government the amount of loss caused by his negligence or defalcation etc. In the brief at slip A it is observed that these bonds ~~did~~ do not contain any clause that the amount covered thereby can be recovered as arrears of land revenue. The District Government Pleader in his letter at slip D says that these security bonds provided that the amount thereof may be recovered as arrears of land revenue. If what the District Government Pleader says is correct the amount of overpayment made by

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the plaintiff in this case will be covered by the security bonds and it will be possible to recover the same from him as arrears of land revenue under section 37 of the Bombay Land Revenue Code. The learned Civil Judge has not properly discussed this aspect of the case.

11. On the question of limitation the Civil Judge has held that the Collector's order dt. 17-4-1951 is illegal and ultra vires, and that therefore article 14 of the Indian Limitation Act does not apply in this case. His view that the Collector's order is illegal and ultra vires does not seem to be correct. It is possible to support the Collector's order not only under section 26 but also under section 187 of the Bombay Land Revenue Code as shown above. If the Collector's order is legal and intra vires, article 14 of the Limitation Act will apply in this case and the suit would be time barred.

12. I think that this is a fit case for preferring an appeal to the District Court. In the letter at slip D the District Government Pleader expresses the same opinion.

Sd/-
31-1-55

Received in G. S. D. Br. Regy on 1/2/55

Jt. Secy
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Secy G.S.D

An appeal may be filed in the Dist. Court. I agree with para 10 above. Prima facie it seems however, that under sec 25 of the Bombay Land Rev. Code, the

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over-payment made by a C.I.
would not be public money* detained
by the C.I. However, the word
'detained' in sec 25
'detained', applies presumably to
the particular papers or property
and not to money. The section
deals with public money, papers
and the word "detained" seems
to qualify the latter expression
only. The second paragraph of sec
25 refers to "discharge the
money or deliver up the papers or
property" and makes a
distinction between money and
papers/property.

Sec. 26 applies, without
qualification, to "any public
money" due by an officer or a
person in the Rev. Dept. in the first

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Suits :

Kanara.

For an injunction restraining the Defendant from recovering by way of arrears of land revenue, or otherwise than by recourse to the Court of Law, any amount whatsoever on account of the alleged loss of or damage caused to the Defendant by or on account of Plaintiff's negligence.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 10413/E.

Bombay Castle, 22nd April 1954.

Letter from the Collector of Kanara, No. 8845, dated the 29th September 1953—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), KARWAR.

CIVIL SUIT No. 156 OF 1953.

Sadashiv Govind Naik ... ... Plaintiff ;

versus

The State of Bombay ... ... Defendant.

Memorandum to the District Government Pleader, Karwar, No. 1062-E, dated the 15th January 1954—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order and in the name of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

[P. T. O.

To

*The Civil Supplies Department,
*The Collector of Kanara,
The District Government Pleader, Kanara, Karwar (with two copies of the brief).

*With a copy of the brief.

No. of 1954.

Copy forwarded for information and guidance to

To

*The Civil Supplies Department,
*The Collector of Kanara,
The District Government Pleader, Kanara, Karwar (with two copies of the brief).

*With a copy of the brief.

No. of 1954.

Copy forwarded for information and guidance to

KANARA CIVIL SUIT NO. 156 OF 1953.

Chronological Statement of Facts.

Plaintiff Shri Sadashiv G. Naik formerly Circle Inspector of Murkwad Circle in Haliyal Taluka, has filed this suit against the State of Bombay. The suit is for an injunction restraining the defendant from recovering by way of arrears of land revenue, or otherwise than by recourse to the Courts of Law, any amount whatsoever on account of the alleged loss of or damage caused to the defendant by or on account of plaintiff's negligence.

2. The facts of the case are briefly as follows: Plaintiff was officiating as Circle Inspector, Murkwad Circle, between 9th November 1948 to February 1949. During the said period the procurement of foodgrains was made on levy system from the cultivators. A cultivator intending to sell his quota would approach the village Shanbhog and obtain from him the number of gunny bags required by him. The village Shanbhog, after making an entry in the register, would give to the cultivator empty gunny bags together with a chalan in three parts, the first part of which was to be filled up by the Shanbhog. The chalan was also intended to operate as a permit. The cultivator then could take the foodgrains and sell it at the purchasing centre where the godown keeper would make the necessary entries in the Chalan. The cultivator then had to present the chalan to the Circle Inspector, or at the Taluka Treasury, for recovering payment.

On 29th December 1948 a cultivator named Krishna Fakirappa of village Janaga in Haliyal Taluka obtain 8 gunny bags and a chalan from the village Shanbhog in order to satisfy his levy demand of 8 gunny bags and 60 lbs. He sold the said quota of paddy on the same day at the Murkwad purchasing centre and presented the chalan. The godown keeper at the said centre after making the necessary entries in the register and in the second part of the chalan (to the effect that 8 bags and 60 lbs. paddy had been sold at the centre) returned the chalan to the said cultivator. The said cultivator presented the chalan to the plaintiff for payment on 24th January 1949 at about 5 p.m. As some fifty cultivators had presented chalans for payments, the work of payment could not be finished by 8 p.m. on that day and the cultivators were asked to come next day i.e. on 25th January 1949; the chalans being kept by the plaintiff, Circle Inspector. On the next day the Circle Inspector made payments to the said cultivator along with others. Third part of the chalan was filled by the Circle Inspector showing that Rs. 2,029-7-3 being the price of 88 bags and 60 lbs. of paddy had been paid to the said cultivator. An entry was also made by the Circle Inspector in the register called L. P. G. III maintained by him showing that Rs. 2,029-7-3 had been paid to the said cultivator whose signature had also been taken in the last column of the entry in token of his having received the payment. The chalans, the godown register and L. P. G. III were audited on 24th February 1949 when it was found that Shri Krishna Fakirappa had been paid Rs. 2,029-7-3 as the price of 88 bags 60 lbs. of paddy though he had actually sold only 8 bags 60 lbs. and was therefore entitled to receive Rs. 191 and odd. It was also discovered that the entries in the chalan were altered in parts 1 and 2 by changing figure '8' to '88', and the

word 'eight' by adding a prefix 'eighty'. An excess payment of Rs. 1,837-8-0 had thus been made in the case on the strength of the forged entries in the chalan. The plaintiff Circle Inspector was thereupon suspended and a departmental enquiry was being held against him.

In the meanwhile Shri Krishna Fakirappa the vendor of 8 bags 60 lbs. of paddy was prosecuted for the offences of forgery and cheating under sections 471 and 420 of the Indian Penal Code. The accused was tried in Kanara Sessions Case No. 11 of 1949. The Sessions Judge, Kanara, delivered the judgment on 23rd January 1950 holding the accused not guilty of any of the offences and acquitting him. The Sessions Judge in his judgment observed, *inter alia*, that the Circle Inspector did not do his duty properly.

Thereafter a departmental inquiry was held against the plaintiff after framing charges on 26th July 1950. The Assistant Collector, K. D., Kanara, submitted the report of his enquiry to the Collector on 23rd October 1950. The Collector passed final orders on 17th April 1951 holding the plaintiff responsible for the loss caused to Government as a result of plaintiff's gross negligence. The Collector, therefore, directed that action should be taken to recover the sum of Rs. 1,837-8-0 from the plaintiff and his sureties under sections 25, 26 and 27 of the Land Revenue Code.

3. Plaintiff preferred an appeal to Government on 15th May 1951 but the same was rejected by Government on 18th November 1952.

4. Plaintiff gave a notice of suit on 30th April 1953 and filed this suit on 30th July 1953.

5. Plaintiff's contentions are briefly stated below: —

(1) Plaintiff was not negligent at all and he cannot be held liable for the loss caused to Government.

(2) Even if plaintiff is held guilty of negligence and therefore responsible for the loss, his liability is limited to Rs. 390 only as shown in paragraph 16 of the plaint.

(3) Government cannot recover any amount from the plaintiff by a short-cut method by resorting to provisions of sections 25, 26 and 27 of the Land Revenue Code.

Grounds of Defence.

Court Fees.—The claim does not appear to have been properly valued for court fees and jurisdiction. The suit is one for an injunction, and in the alternative for certain declarations without any consequential relief. In the case of the alternative claim for mere declarations the plaintiff must pay the fixed court fee provided under the Court Fees Act.

2 Main contention of the plaintiff is that he was not negligent at all and he cannot be held liable for the loss caused to Government. It is not disputed by the plaintiff that a sum of Rs. 2,029-7-3 has been paid as price of 88 bags and 60 lbs. of paddy though the vendor Shri Krishna Fakirappa had sold at the Murkwad purchase centre only 8 bags and 60 lbs. of paddy and thus Government suffered a loss of Rs. 1,837-8-0 The loss was due to the tampering of parts 1 and 2 of the Chalan (in file 1 at p. 122 of the case papers) by alteration of 8 to 88 both in figures and in words. The chalan was presented to the

held by the Collector is improper or illegal. The Collector came to the conclusion that the plaintiff had been grossly negligent in his duties in making excess payment of Rs. 1,837-8-0 and was therefore responsible to make good the loss to Government. The Collector came to that conclusion after careful scrutiny of the facts and evidence and after hearing plaintiff. Gross negligence of the plaintiff in the discharge of his duties is therefore clearly established and he cannot escape his liability to make good the loss.

3. Next important contention of the plaintiff is, that the amount of the loss caused to Government cannot be recovered from him by resorting to provisions of sections 25, 26 and 27 of the Land Revenue Code. Plaintiff's case is that he had not "detained" any amount due to Government nor had he executed any bond under Financial Rule 40. The plaintiff therefore contends that the said amount of loss cannot be recovered under any provisions of the Land Revenue Code. Plaintiff's contention is not true or proper and the amount of loss caused to Government as a result of plaintiff's negligence can be recovered from him under section 26 of the Land Revenue Code as arrears of Land Revenue. Section 26 of the Code provides that the Collector of his own motion, if the officer or other person is or was serving in his department, may also take proceedings to recover any public moneys due by him in the same manner and subject to the same rules as are laid down in the Act (Land Revenue Code) for the recovery of arrears of land revenue from defaulters. Plaintiff is an officer or a person serving in the Collector's department within the meaning of section 26. The plaintiff Circle Inspector was entrusted with the work of making payments to the cultivators who sold their levy quota of foodgrains to Government. For that purpose he was in possession of public moneys. The Collector held that the Government suffered a loss of Rs. 1,837-8-0 as a result of plaintiff's gross negligence and that the said amount should be recovered from him as arrears of Land Revenue dues. It was public money due by the plaintiff within the meaning of section 26 and can be recovered as arrears of Land Revenue dues. The Collector in his report refers to the two security bonds furnished by the plaintiff one on 15th August 1940 for Rs. 500 on his appointment as Shanbhog and another for Rs. 1,500 on 16th December 1948 on his appointment as Circle Inspector. Under the terms of both the bonds plaintiff has bound himself to pay to Government the amount of loss on defalcation in his account. The plaintiff has also agreed that the said bonds would be effective in connection with the duties of any other office to which he might be subsequently transferred. The bonds do not contain a clause that the amount covered by the bonds can be recovered as arrears of Land Revenue. However, the plaintiff has forfeited the amount of the bonds as a result of excess payment of public money negligently made by him and the amount to the extent of the amounts specified in the bonds can be recovered under section 26 of the Code.

4. The last important contention of the plaintiff is that his liability for loss is limited to Rs. 330 only inasmuch as Government has come in possession of a sum of Rs. 1,446-12-6 which was attached from the house of Shri Krishna Fakirappa the accused in Sessions Case No. 11 of 1949. The said amount is the amount of Muddamal in the aforesaid Sessions Case.

plaintiff, on 24th January 1949 and as there was a quite rush the payment could not be made till next morning and the chalan remained with the plaintiff till that time. According to the plaintiff himself, therefore, tampering in the chalan must have been made before it was presented to him for payment. The village Shanbhog had mentioned at the top of Part I of the chalan that 8 empty bags had been supplied to the vendor, Shri Krishna Fakirappa. This had not been tampered with. The Shanbhog had filled the lower part of the same chalan mentioning therein that the vendor intended to sell 8 bags of paddy to Government. This figure was subsequently altered to 88 by adding another figure 8 after the first figure written by the Shanbhog. On 31st December 1949 the cultivator delivered 8 bags of paddy to the godown keeper at Murkwad paddy purchasing centre. The second part of the chalan was filled by the godown keeper who mentioned therein that 8 bags and 60 lbs. of paddy had been sold by the vendor. The godown keeper had written the quantity of paddy thus supplied both in figure and words. The entries made by the godown keeper have also been tampered with. The figure 8 written by him is altered to 88 by adding another figure 8 behind the figure written by the G. K. Similarly word 'eighty' in Kanares has been added before the word 'eight' in Kanares. On the basis of these facts the question is whether the plaintiff was or was not negligent in paying a sum of Rs. 2,029-7-3 as the price of 88 bags and 60 lbs. of paddy. Had the plaintiff exercised due care he could have at once seen the figure 8 at the top of the chalan as against the figures and words eighty-eight in the chalan. Secondly, the figure 8 added in the endorsement made by the Shanbhog in the first part of the chalan, is in thicker ink and is smaller in size. In the second part of the chalan filled in by the godown keeper figure 8 has been added behind the figure 8 written by the G. K. and words eighty in Kanares have been added behind the word eight but the two words are not joined as they should have been according to the mode of writing in Kanares. In Kanares when vowel 'oo' is followed by vowel 'ay' there is a *sandhi* and both the vowels together are written as 'aye'. In this case the words 'eighty' and 'eight' in Kanares ending 'oo' and 'ay' are written separately. This fact would not have escaped the notice of the plaintiff, had he been careful in scrutinizing the chalan. These facts would have at once raised a suspicion in the mind of any person that the chalan had been tampered with. In the Committing Magistrate's Court the plaintiff stated that he had asked the vendor as to the number of bags he had sold to the Government, however, in the Sessions Court he stated that he had not asked the vendor any such question. The Sessions Judge, therefore, observed that the plaintiff-Circle Inspector and the Shanbhog assisting him in making the payments were persons who did not do their duty properly and that if what they said was true, they did not read parts 1 and 2 of the chalan properly. Thereafter the Collector held departmental proceedings against the plaintiff. The plaintiff was specifically charged with being grossly negligent in the discharge of his duties in paying the said amount to Shri Krishna Fakirappa. The plaintiff preferred to be heard in person and claimed that oral enquiry should be held in his presence. The plaintiff was accordingly heard and the oral enquiry was held in his presence by the Collector. It is not the plaintiff's case that the enquiry

held by the Collector is improper or illegal. The Collector came to the conclusion that the plaintiff had been grossly negligent in his duties in making excess payment of Rs. 1,837-8-0 and was therefore responsible to make good the loss to Government. The Collector came to that conclusion after careful scrutiny of the facts and evidence and after hearing plaintiff. Gross negligence of the plaintiff in the discharge of his duties is therefore clearly established and he cannot escape his liability to make good the loss.

3. Next important contention of the plaintiff is that the amount of the loss caused to Government cannot be recovered from him by resorting to provisions of sections 25, 26 and 27 of the Land Revenue Code. Plaintiff's case is that he had not "detained" any amount due to Government nor had he executed any bond under Financial Rule 40. The plaintiff therefore contends that the said amount of loss cannot be recovered under any provisions of the Land Revenue Code. Plaintiff's contention is not true or proper, and the amount of loss caused to Government as a result of plaintiff's negligence can be recovered from him under section 26 of the Land Revenue Code as arrears of Land Revenue. Section 26 of the Code provides that the Collector of his own motion, if the officer or other person is or was serving in his department, may also take proceedings to recover any public moneys due by him in the same manner and subject to the same rules as are laid down in the Act (Land Revenue Code) for the recovery of arrears of land revenue from defaulters. Plaintiff is an officer or a person serving in the Collector's department within the meaning of section 26. The plaintiff Circle Inspector was entrusted with the work of making payments to the cultivators who sold their levy quota of foodgrains to Government. For that purpose he was in possession of public moneys. The Collector held that the Government suffered a loss of Rs. 1,837-8-0 as a result of plaintiff's gross negligence and that the said amount should be recovered from him as arrears of Land Revenue dues. It was public money due by the plaintiff within the meaning of section 26 and can be recovered as arrears of Land Revenue dues. The Collector in his report refers to the two security bonds furnished by the plaintiff one on 15th August 1940 for Rs. 500 on his appointment as Shanbhog and another for Rs. 1,500 on 16th December 1948 on his appointment as Circle Inspector. Under the terms of both the bonds plaintiff has bound himself to pay to Government the amount of loss on defalcation in his account. The plaintiff has also agreed that the said bonds would be effective in connection with the duties of any other office to which he might be subsequently transferred. The bonds do not contain a clause that the amount covered by the bonds can be recovered as arrears of Land Revenue. However, the plaintiff has forfeited the amount of the bonds as a result of excess payment of public money negligently made by him and the amount to the extent of the amounts specified in the bonds can be recovered under section 26 of the Code.

4. The last important contention of the plaintiff is that his liability for loss is limited to Rs. 330 only inasmuch as Government has come in possession of a sum of Rs. 1,446-12-6 which was attached from the house of Shri Krishna Fakirappa the accused in Sessions Case No. 11 of 1949. The said amount is the amount of Muddamal in the aforesaid Sessions Case.

99/24

The District Government Pleader is requested to ascertain the orders passed by the court regarding the disposal of the Muddamal. The Collector reports that the Court has held that the accused was entitled to the return of the said amount. The Collector further states that out of that amount a sum of Rs. 1,308-15-6 lying in the Court of the Resident Magistrate, First Class, Sirsi, during the committal proceedings was stolen away along with amounts of the Muddamal in other criminal cases. It should, therefore, be urged that the sum of Rs. 1,308-15-6 was never credited to Government as alleged by the plaintiff. Even assuming without admitting that the said amount or any other sum was in Government custody, plaintiff cannot claim any benefit of it for setting off the amount of the loss caused to Government against the amount of Muddamal. The amount lying in the Court as Muddamal is not Government property. The Court has to pass an order for its disposal under section 517 of the Code of Criminal Procedure. If the property was attached from the accused, who has since been acquitted, it must be returned to him. According to Collector's report the Criminal Court has already passed an order holding the accused person entitled to the said amount. Plaintiff is not, therefore, entitled to set off the amount of the Muddamal against the amount of loss proposed to be recovered and he is liable to pay the whole amount of loss viz. Rs. 1,837-8-0.

5. The other contentions and averments in the plaint are not true and should be denied. Attention of the District Government Pleader is invited to the Collector's remarks in this behalf.

6. For all the reasons stated above, it should be urged that the suit fails and should be dismissed with costs.

Suits: Kanara.

For an injunction restraining the Defendant from recovering by way of arrears of land revenue, or otherwise than by recourse to the Court of Law, any amount whatsoever on account of the alleged loss of or damage caused to the Defendant by or on account of Plaintiff's negligence.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 5748-G
Bombay Castle, 14th March 1955.

Read Government Resolution, Legal Department No:10413/E dated the 22nd April 1954.

Endorsement from the District Government Pleader, Kanara

In the Court of the Civil Judge (Senior Division) KARWAR. Civil Suit No.156 of 1953. Sadashiv Govind Naik ... Plaintiff vs. The State of Bombay. ... Defendant.	No. 3 dated the 3rd January

1955 stating that the suit noted in the margin was decided by the Civil Judge (Senior Division), Kanara on 29th December 1954 when the following order was passed:-

> The Defendant is hereby restrained from recovering the amount of Rs.1837-8-0 from plaintiff as arrears of land revenue in pursuance of the order passed by the Collector of Kanara on 17-4-1951 against him. Deft. to pay Plff. the costs of the suit and bear its own.

Endorsement from the District Government Pleader, Kanara No.3 dated the 3rd January 1955 recommending the institution of an appeal.

Endorsement from the Collector of Kanara No.8845 dated the January 1955 forwarding the above.

RESOLUTION: Sanction is accorded to the institution of an appeal in the Court of the District Judge, Kanara against the decision of the Civil Judge, (Senior Division) dated the 29th December 1954.

By order and in the name of the Governor of Bombay,

original

(D.P. Shikhare.)
Deputy Secretary to Government.

To
The Agricultural and Forests Department.
The Collector of Kanara,
The District Government Pleader, Kanara.

Submitted after issue

2) File no S Kanara /54 (New)

1873

Appeal No/54

S. Kanara /54
(New)
19/3/55

Sadashiv Ramchandra Naik
vs
The State of Bombay

1637

A. & F.D. (C.S.S.)/II

No. 725/2392/Estt.(D).

Please see Br.II-C note dated 31-3-1955 at page 2/C.

No previous papers in this connection are forthcoming in this Br. It is therefore, suggested that the L.D. may be requested to show the papers underlying the Kanara Civil Suit No. 156 of 1953.

Sd/-

U.O.R. No. 725/2392-Estt.(D)/II to the L.D. dated the 12th April 1955.

Legal Department.

As desired by the A. & F.D. in its note above the Legal Department File No. S. Kanara 3/54 may be sent to that Department with a request to return the file immediately when done with.

13/4

14/4

14/4

~~Solicitor to Government.~~
~~(Mofussil Litigation)~~

U.O.R. to A. & F.D. (C.S.D.) No. 8188/E, dated the 15th April 1955.

TKM/14.4.

15/4

Submitted after due ---
await, return of file --
19/4
JS 19/4

Submitted
As the file is rec'd from
ASFD this may be filed
in S Kamara 3/5/4

20/8
SO(Pol) 22/8

Skanara 3/54

In the District Court of Kanara, Karwar.

Civil Appeal No.33 of 1955.

Dist.Govt. Pleader.

The State ... Appellant

Vs.

Shri M.R.Kamat.

Sadashiv Govind Naik, 53, Shanbhog of Kathinkon, Karwar Taluka. ... Respondent.

Claim - Rs.1837-8-0.

x x x x

x x x x x

Order.

The decree of the lower court is confirmed and the appeal is dismissed with costs.

Bill of costs.

	Appellant	Respondent.
1. Stamp for appeal Memo.Exh.1:	6-4-0 ✓	x x
2. " for applications Exhs. Nos.2 and 3:	3-0-0 ✓	
3. Process fee, Exh.1:	3-12-0 ✓	
4. Pleader's fee on Rs.1837-8-0:	114-13-6 ✓	
5. Copying fees, Exhs.2 and 3:	23-9-0 ✓	
Paper Book fees:	39-0-0	
Total -	190-6-6	

lm 28-9-56.

Given under my hand and the seal of the Court this 3rd day of September 1956.

Sd:- M.K.Chickermane, Bench Clerk.

Sd.M.S.Apte, District Judge, Kanara.

Appellant's pleader:- Sd.B.S.Mavinkurve,

Respondent's pleader: Sd.M.R.Kamat.

"True copy"

Dist.Govt.Pleader,Kanara, Karwar.

190 6
114.13.6
75-9-0